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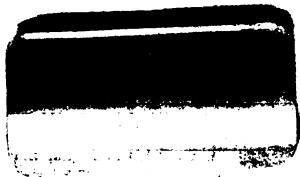
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CHAPTER VII

PORT DIFFERENTIALS

1. WESTBOUND

The basis for rates both eastbound and westbound through the Atlantic ports has been set forth in the preceding pages. It has been shown that at this writing the class rates from Boston to percentage territory are the same as the New York rates. It has also been stated that Baltimore and Philadelphia are accorded differentials under the New York rates, and that the Virginia ports usually take the same rates as Baltimore eastbound, but arbitraries under the Baltimore rates westbound. The Baltimore differentials westbound are an 8-cent scale, while the Philadelphia differentials are a 6-cent scale. Eastbound the differentials to Boston are a 7-cent scale over the New York rates, while the Baltimore scale is 3 cents under New York on classes and on commodities except grain and flour. The differentials to Philadelphia are 2 cents under the New York rates except on grain and flour.

While the basis has been explained, the problems underlying the port differentials have not been presented. In 1898 the New York Produce Exchange brought a complaint before the Interstate Commerce Commission against the Baltimore & Ohio Railroad Company alleging that the grain rates to Boston, Philadelphia, Baltimore, Newport News, and Norfolk were discriminatory against the city of New York. The excerpt from the de-

cision of the Commission in this case given below sets forth something of the important problems in the history of port differentials prior to 1898.

The complainant attacks by its complaint certain differentials in freight rates upon the ground that they unduly prefer Boston, Philadelphia, Baltimore, Newport News and Norfolk as localities to the locality of New York. The Boston Chamber of Commerce, the Baltimore Chamber of Commerce and certain trade organizations in Philadelphia have intervened upon the ground that the commercial interests which they represent are or may be affected by the proceeding. Norfolk and Newport News have not been represented at any of the hearings.

Upon the trial the issue apparently narrowed itself to one between New York, Philadelphia and Baltimore. The Boston Chamber of Commerce appeared upon the first hearing in New York, but did not appear at any subsequent hearing, nor did it ask to be heard upon final argument. This seems to have been upon the assumption that the complainant made no question as between itself and Boston. That is, New York does not ask to be allowed a differential upon export traffic as against Boston. Neither do we understand that it has been suggested in this case that a different differential should be applied to Norfolk and Newport News than is applied to Baltimore. The controversy is really between the three cities, New York, Philadelphia and Baltimore. Whenever facts with reference to Boston, Newport News and Norfolk are stated, they are only given to make the statement complete as bearing upon the controversy between these three localities.

It incidentally appears that Boston has two rates,—an export and a domestic rate. The legality or propriety of these different rates was not referred to in the discussion of the case, and is not considered in its disposition. The differentials in question are those upon east-bound freight traffic to the above-named cities. There is no dispute as to the rates. Taking the rate to New York as a basis, the rate to Philadelphia is 2 cents per hundred pounds lower, all classes; and to Baltimore 3 cents per hundred pounds lower, all classes. Norfolk and Newport News take the

Baltimore rate, and upon export traffic, Boston takes the New York rate.

The rate itself frequently varies, but the differentials are at all times and upon all classes the same. The rates complained of in this proceeding are those upon grain, flour and provisions, and these rates from Chicago at the time of the filing of the complaint were as follows:

To	Grain.	Flour.	Provisions.
New York	20 cts.	20 cts.	30 cts.
Boston (for export)....	20 cts.	20 cts.	30 cts.
Philadelphia	18 cts.	18 cts.	28 cts.
Baltimore	17 cts.	17 cts.	27 cts.
Newport News	17 cts.	17 cts.	27 cts.
Norfolk	17 cts.	17 cts.	27 cts.

The complaint also attacks what are known as the ex-lake differentials. Large quantities of freight, especially grain and flour, are brought through the Great Lakes to various points upon the southern shores of Lake Erie and Lake Ontario, from whence they are transported by rail to the Atlantic seaboard. Upon this a differential is applied of 1 cent per hundred pounds in favor of Philadelphia and Baltimore as against New York. This differential does not seem to apply to provisions. At the time of the filing of this complaint the rates from lake ports to Boston, New York, Philadelphia and Baltimore respectively per hundred pounds were as follows:

To	Grain.	Flour.	Provisions.
New York	11 cts.	11 cts.	16 cts.
Boston (for export)....	11 cts.	11 cts.	16 cts.
Philadelphia	10 cts.	10 cts.	16 cts.
Baltimore	10 cts.	10 cts.	16 cts.

Special commodity rates by the bushel were also in effect from these lake ports to the above named cities. They were in lots of 8,000 bushels and over, to one consignee and one destination, as follows:

	Wheat.	Corn.	Barley.	Oats.
New York	5 cts.	4½ cts.	4½ cts.	3½ cts.
Boston (for export)....	5 cts.	4½ cts.	4½ cts.	3½ cts.
Philadelphia	4 cts.	3½ cts.	3½ cts.	3 cts.
Baltimore	4 cts.	3½ cts.	3½ cts.	3 cts.

It will be seen from the above tables that the regular differential upon grain when shipped in carload lots by the hundred

pounds is 1 cent in favor of Baltimore and Philadelphia; when shipped under the special commodity tariff by the bushel it is considerably more, being 1 cent per bushel in the case of wheat and corn and $\frac{1}{2}$ cent per bushel in the case of barley and oats. Grain for export would, of course, always be shipped under the commodity tariff.

Some knowledge of the history of these differentials is necessary to an understanding of the situation. The earliest agreed differential of which the testimony gives any account was that of 1869, by which Baltimore enjoyed an advantage of 10 cents per hundred pounds over New York. It does not appear what the differential in favor of Philadelphia was. In 1870 a war of rates occurred, with the result that the Baltimore differential was reduced to 5 cents per hundred pounds on grain and the lower classes of freight, while upon the higher classes of freight the differential was 10 cents per hundred pounds, and these differentials seem to have continued until about 1876. It does not appear what the differential of Philadelphia upon east-bound traffic was, but a tariff of November, 1875, gives the differentials upon west-bound traffic as follows:

	First Class.	Second Class.	Third Class.	Fourth Class.	Special Class.
Baltimore	10 cts.	9 cts.	8 cts.	6 cts.	5 cts.
Philadelphia ...	7 cts.	7 cts.	6 cts.	4 cts.	3 cts.

In March, 1876, this system of an arbitrary differential was abandoned and the lines agreed upon a system of percentage differentials based upon the relative distances from western cities to Baltimore, Philadelphia, and New York, respectively, taking New York as the basis. Under this agreement the rate from Chicago to Baltimore was 13 per cent and to Philadelphia 10 per cent less than to New York, and from Cincinnati to Baltimore 24 per cent, and to Philadelphia 12 per cent less than to New York.

After a few weeks' experience, the New York Central and the Erie withdrew from this agreement upon the assertion that it was too favorable to Baltimore and Philadelphia. Thereupon another rate war ensued, which terminated in an agreement of April 5, 1877, by which fixed differences in rate were re-established in place of differences based upon relative distances.

Under this agreement east-bound differentials from western points were 3 cents to Baltimore and 2 cents to Philadelphia upon all classes. On west-bound traffic the differentials in favor of Baltimore and Philadelphia differed with different classes, and were as follows:

	First Class.	Second Class.	Third Class.	Fourth Class.
From Baltimore	8 cts.	8 cts.	3 cts.	3 cts.
From Philadelphia	6 cts.	6 cts.	2 cts.	2 cts.

It would seem that the contentions between the carriers which had given rise to these differentials were mostly over export traffic, and that the differentials were insisted upon and were allowed for the purpose of permitting the various carriers to enjoy a portion of that traffic. The agreement of April 5, 1877, seems to have been made upon the idea of equalizing the cost of carriage from various interior shipping points to foreign ports. It recognized the fact that ocean freight rates from Baltimore and Philadelphia to such foreign ports were higher than from New York and that inland freights must be correspondingly lower so that the total freight might be the same.

The agreement provided that, upon the giving of certain notice, any party to it might withdraw, and in June, 1880, the New York Central gave notice of withdrawal, stating that the differentials were originally based upon supposed differences in ocean rates, that such differences no longer existed, that therefore the reasons for the differentials had ceased to exist and that the differentials themselves should also cease. The Pennsylvania and the Baltimore and Ohio insisted upon the differentials, and the action of the New York Central apparently led to another rate war, which terminated in the latter part of 1881 by a restoration of the differentials of April 5, 1877.

It would seem that the various Atlantic seaports which were served by these different railway lines had taken more or less interest in this subject of differentials. New York insisted that the differentials should be abolished; Philadelphia that there should be no difference between that city and Baltimore; and Baltimore that the differential of 3 cents allowed in its favor

was too low; and each city strenuously contended that it was the duty of the railway lines serving that particular locality to insist upon and obtain an adjustment of these differentials in accordance with its views.

Apparently for the purpose of considering the claims of these different communities and perhaps placating the public rather than of settling the question for the carriers, the New York Central, the Erie, the Pennsylvania and the Baltimore & Ohio joined in requesting Allen G. Thurman, Elihu B. Washburne and Thomas M. Cooley to act as an advisory commission for the purpose of investigating and reporting upon the general matter of these differentials. These gentlemen accepted the invitation and entered upon their work in February, 1882.

In their investigation the railroad companies themselves declined to participate further than by furnishing to the commissioners whatever information might be asked for. This commission held sittings in New York, Philadelphia and Baltimore in the east, and in certain cities in the west, heard statements and arguments from the representatives of these various localities, collecting whatever information it could bearing upon the subject, and finally in July, 1882, made a report. This report seems to have been very carefully considered by the commissioners, and, while it deals largely in theory and generalities, it appears to be, as was to have been expected from the character of the gentlemen who signed it, an able and comprehensive review of the situation.

The conclusion at which they arrived was that distance could not be used as a measure of these differentials; neither could cost of service. Competition, which embraced these two, and all other factors, if properly conducted through a series of years, was the most reliable guide. Competition, after many years, had resulted in fixing the differentials in force. Those differentials were justified to a certain extent by distance and to a certain extent by cost of service. The purpose of the differential was to equalize the cost of exporting grain and other merchandise through the various ports to which they were applied. A difference in ocean freight rates from those respective ports, corresponding generally to the inland differentials, was found to exist. Upon the whole, therefore, the commission declined to recommend

that the differentials which had been agreed upon should be disturbed.¹

The conclusions of the Commission in this case set forth so well the principles underlying the problems of port differentials and the attitude of the Commission at that time that they are reproduced in full below.

CONCLUSIONS.

The questions presented by this record upon the foregoing facts are of very considerable importance. The differentials in case of every locality except Boston apply not merely upon freight intended for export, but upon all traffic forwarded to these points. In order to abolish the differentials it would be necessary either to raise the Baltimore and Philadelphia rates, or to reduce the New York rate. If the New York rate were to be reduced it would amount, upon all the traffic to which that differential applies, to the loss of nearly \$1,000,000 per year. If the Baltimore rate were to be raised to the basis of the New York rate, that would add about the same amount to the revenues of the lines serving localities south of New York, and in each case this would mean an addition to or a subtraction from the net revenues of the companies. This is upon the assumption that the volume of traffic continues the same; but the purpose of a differential is to influence the flow of traffic and the abolishing of these might divert to the New York lines such quantities of freight as to seriously deplete the revenues of the southern lines. It is, therefore, from the standpoint of the carriers, a most delicate matter to attempt to modify these differentials, and this is sufficiently shown by the fierce contests which resulted in the adoption of those now in force.

Upon its part the complainant insists that some relief of the kind asked for is of vital consequence to New York. In 1882 something more than 50 per cent of all the wheat, corn and oats exported through the Atlantic and Gulf ports went out from the port of New York, while in 1896 this per cent had fallen to a little more than 25, and the decline from 1895 to 1896 was shown

¹7 I. C. C. Rep., 615-20.

to be more than three fourths of the total shrinkage. Now, the complainant says that while New York may for a single year, or for two or three years, continue to hold its import trade, notwithstanding the loss of its exports, eventually imports will flow in through the same ports from which exports go out, and that if the larger part of grain exports are diverted by these differentials from New York, the result will eventually be the loss to that city of a corresponding amount of its foreign trade, so that this condition of things becomes a most serious menace to the commerce of that port.

Philadelphia and Baltimore, upon the other hand, strenuously insist that to abolish these differentials would take from them the little foreign trade which they are now enabled to obtain.

It should be noticed in the outset exactly what the relation of the Commission is to the questions presented. It seems to have been more or less assumed upon the hearing and discussion of this matter that the Commission was vested with authority to revise the action of the defendants in the making of these differentials, and that the same considerations would address themselves to us in passing upon their correctness that the defendants ought to have considered in putting them in force. This is entirely wrong. Our function is not that of the Advisory Commission of 1882. We are not discharging the duties of arbitrators selected to determine between the different carriers upon the fairness of these differentials. Our only jurisdiction is to inquire whether the Act to Regulate Commerce has been violated. That law does not seek to interfere with the business operations of carriers subject to its provisions until those operations contravene the provisions of the Act itself.

Take the situation presented by this case. Here is a vast amount of freight to be transported from the West to the Atlantic seaboard, and here are these various lines of railway so situated that they can participate in that transportation. Now, considering this as a business proposition from the standpoint of the carrier, we have nothing whatever to do with it. The railways may make whatever rates, form whatever lines, establish whatever differentials they may deem best for the purpose of securing and conducting that transportation. Whether in so doing they

act wisely or unwisely, fairly or unfairly between themselves, we do not inquire. Our only inquiry is, does the situation which the carriers have created violate the Act to Regulate Commerce. That this is the extent of our authority is now settled by the decisions of the United States Supreme Court. . . .

The question before us for consideration is, therefore, whether these differentials are in violation of the Interstate Commerce Act. The complainant alleges that they are in contravention of the third section of that Act, for the reason that they discriminate against the locality of New York and in favor of the localities of Baltimore and Philadelphia. It should be noticed in this connection, upon the authority of the cases above cited, that it is not sufficient to show the fact of such a discrimination. Railway companies are not prohibited by the third section from preferring one locality to another unless that preference amounts to an undue or unreasonable one. This phase of the law does not seem to have been much dwelt upon in the argument, but it is important that it should be fully appreciated. It is insisted that these differentials give an undue preference for the reason that they are without excuse or justification. If the assumption of fact embraced in this statement is true, the conclusion probably follows. A preference without legitimate excuse would be in and of itself an undue and unreasonable one. It is therefore proper to consider at the very outset upon what alleged pretext the defendants have instituted these differentials.

A good deal has been said in various parts of the case about differences in distance and differences in cost of service, and these alleged advantages in favor of Baltimore and Philadelphia have been earnestly relied upon by the representatives of those localities in justification of the preference which they receive. An examination of the whole case plainly shows, however, that while these elements may have to some extent entered into the determination of the question by the defendant carriers, the controlling purpose of the differentials is to distribute between rival railway lines the export traffic which moves from the west to the Atlantic seaboard. Very large quantities of grain and provisions are exported from the United States to foreign countries. This traffic originates in the west and the defendant lines are so

situated that they can carry it to the ports of export. If it passes over one line it is exported through the port of New York; if it passes over another line it is exported through the port of Baltimore. Now, the primary purpose of these differentials is, not to do justice to a particular port, nor to recognize the advantages of a particular port, but to enable the various competing lines to obtain a fair proportion of this traffic. In other words, the reason for these differentials is competition between railways. Cost of service and distance are very likely taken into account by the defendants in determining whether under the operation of the differentials a particular line has obtained more than its share of the traffic, but the underlying principle is competition. Upon no other theory could Boston, which is 88 miles farther from Chicago than New York, be given the same rate with New York, while Norfolk, which is 72 miles farther from Chicago than New York, has a rate of 3 cents per hundred pounds less.

Do these competitive conditions justify the preference of one locality to another? It is clear under the recent decisions of the United States Supreme Court, not that they necessarily do, but that they may. It was held in the Import Rate Case, *Interstate Commerce Commission v. Texas & P. R. Co.* 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405, that competition *might* justify a railway line between New Orleans and San Francisco in carrying merchandise as a part of a through shipment from Liverpool to San Francisco at a rate which yielded to that company for its division less than one-third of what it received for carrying the same kind of merchandise from New Orleans to San Francisco. In the Troy Case, *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 144, 42 L. ed. 414, it was determined that railway competition did justify the defendant in making a lower rate to a more distant point. Railway competition may, therefore, excuse the giving of a preference to a particular locality or a particular commodity, provided the interests of the public are not unduly sacrificed to those of the carrier.

In the light of these cases it is difficult to see why it is not perfectly legitimate for carriers to make differentials like those in question. The Baltimore & Ohio Railroad extends from Chicago to Baltimore. It comes into competition with the lines running

to New York for this export grain traffic. There are many kinds of traffic in which other facilities, like expedition, are of more importance than the mere question of rates, but in the case of this traffic where a change of $\frac{1}{8}$ cent a bushel in the cost determines through which port it shall be exported, the rate is practically the only medium of competition, and the only way by which the Baltimore & Ohio Company can secure a share of this traffic is by making a rate in competition with the rate to New York which will secure it. If a lower rate is necessary it may make that lower rate, and it might make it even though the distance from Chicago to Baltimore was greater than the distance from Chicago to New York, and even though the cost of transporting that grain to Baltimore was greater than the cost of transporting it to New York.

We think, therefore, that the principle upon which these differentials are made is legitimate, but it does not by any means follow that the differentials themselves are legitimate. A given preference may be justifiable under some circumstances, and not under others; to some extent, and not to greater extent. Granting that a discrimination against a locality is excusable in theory, the question still remains whether under the third section it is undue or unreasonable, and that question is one of fact in each individual case. Upon the whole situation, is the preference justifiable? This seems to be the rule of the cases above referred to.

Evidently in applying this rule to a particular case the just interest of the carrier should be considered. Carriers are allowed to prefer one locality to another under stress of competition in some instances, for the reason that the interest of the carrier requires it; but every preference is to a degree a hardship upon the community against which it is enforced, and that hardship should be, in a way, set over against the interest of the carrier. In this connection, what the Supreme Court of the United States, in *United States v. Trans-Missouri Freight Asso.* 166 U. S. 290, 41 L. ed. 1007, said of the relation of the railways to the public, "that they all primarily owe duties to the public of a higher nature even than that of earning large dividends for their shareholders," must be borne in mind. Still it is plain that the inter-

est of the carrier is an important factor to be considered, and that in order to justly estimate a given case it is necessary to know how the carrier as well as the public stands affected by the preference.

In this case we have no information from the carriers' standpoint. The defendants appeared at the opening hearing, but gradually withdrew from participation in the proceedings until finally the contest became one between the three ports, New York, Philadelphia and Baltimore. We only know that the defendants have established and are maintaining these differentials, and we assume that they are satisfactory to them, and that any disturbance of them would be against their wish and against their interest. This is, perhaps, equivalent to saying that the complainant assumes the burden of establishing the fact that there is an undue preference.

The complainant alleges that an examination of the basis upon which these differentials are constructed and the history of the differentials themselves show them to be manifestly unfair to the port of New York for the reason, first, that the pretended difference in cost of ocean freights from the various ports does not exist, and, secondly, that, assuming the differentials to have been fair when they were first agreed upon in 1877, the changed conditions render them grossly unfair at the present time. We will examine briefly these claims.

The rates complained of are at the present time recognized and maintained by most of the defendants through the medium of the Joint Traffic Association. Mr. George R. Blanchard, the commissioner of that association, stated in his testimony before the Commission the theory upon which these differentials were fixed. As we understand his testimony upon that point, it was this: A considerable part of the grain in question is actually shipped from the city of Chicago. Almost all of it is purchased upon the basis of the Chicago market price. Chicago may therefore be treated as the point of origin. The largest foreign market is Liverpool, and that, for the purpose of illustration, may be treated as the point of destination. Now, the object of these differentials is to make the cost of transporting this grain from Chicago to Liverpool the same through all these ports. Perhaps, more

accurately speaking, Mr. Blanchard testified that the purpose of the differential was to equalize the advantages of transportation through these several ports, but inasmuch as in the exportation of grain, cost is the principal element, it comes to substantially the same thing.

Now, if the purpose of the differential is to make the cost of exporting through the different ports the same, it is evident that in case the cost of carriage from the various domestic ports to the foreign port is the same, then the cost of placing the grain on shipboard at the domestic ports should also be the same, but that any difference in the expense of ocean carriage should be equalized by a corresponding difference in the cost of inland carriage. Assuming that the cost of ocean carriage from Baltimore to Liverpool is 3 cents per hundred more than from New York, then the inland rail rate from Chicago to Baltimore must be 3 cents per hundred less, so that the total rate may be the same. This, Mr. Blanchard says, is the theory upon which the differentials are determined. There are certain minor considerations, but, broadly speaking, the differential is supposed to correspond with and make good a difference in the ocean freight rate. In order to determine whether the present differentials are consistent with that theory it is only necessary to inquire whether the existing difference in ocean rates corresponds to the established differential.

It will be seen by referring to the findings of fact that grain is carried either in full cargo shipments or at berth rates. It will be further seen that the full cargo rate is the same from each one of these three ports. There are certain minor differences in favor of New York and certain minor differences in favor of Baltimore and Philadelphia; but taken altogether, we are satisfied that practically there is no difference in the expense of the ocean carriage of grain in full cargo lots from New York, Philadelphia and Baltimore.

With berth rate business this is different, and New York enjoys very important advantages over either Baltimore or Philadelphia. In the first place the lines of steamship from that port reach more grain markets than can be reached from either Baltimore or Philadelphia. Then, the lines to all the principal grain markets

are much more numerous and the sailings very much more frequent. All this gives the port of New York, in berth rate business of all kinds, a great advantage over either of her competitors in this proceeding, and we have found that this difference amounts to about 2 cents per hundred pounds as to both Baltimore and Philadelphia. From this alone it would follow—assuming this to be the only question involved in the establishment of the differential—that there ought to be no differential upon full cargo business, and that the present differential is substantially right as to berth rate business. But there is no way in which full cargo grain can be distinguished in the matter of the freight rate from berth rate grain, and it is necessary to find some figure which will properly adjust the two. The articles involved in this proceeding are provisions, grain and flour. Provisions and flour are entirely shipped upon the berth rate. Wheat, except in exceptional cases, is exported by berth rate. Corn more frequently goes by full cargo shipments. An idea of the relative amount of grain shipped by berth rate and full cargo can be obtained from Tables 4 and 5.²

The berth rate is very much less stable than the full cargo rate and, as a rule, lower than the full cargo rate. As a result, little or no full cargo business can be done until the berth space has been exhausted. As was well said by counsel for one of the intervenors, a full cargo business is only possible when the berth business has come to the point of saturation. It follows, therefore, that in years when grain exports are light the full cargo business is small, while in years when exports are heavy that business is larger; and from this it further follows, inasmuch as the full cargo business can be done more advantageously at Baltimore and Philadelphia than at New York, that in years of large grain exports Philadelphia and Baltimore ought to obtain much more of this export traffic than they do in years when the total amount of exports is small. This rule is not an invariable one, however, since other traffic conditions may make the supply of berth space larger in years of large exports than in years of small exports.

² Table numbers appearing in this decision have reference to tables filed with the Commission but which are not here reproduced.

It should be observed further that any finding of fact as to the relative berth rates from these three ports for any one year or for any succession of years, especially for a series of years in the past, must be extremely unsatisfactory. The rate which is quoted and the rate paid for actual engagements are not by any means the same, so that it cannot be stated within the limits of perhaps a cent per hundred what the relative berth rates from New York, Philadelphia and Baltimore are.

It will be seen, therefore, that any attempt to determine exactly the relative cost of ocean carriage from New York, Philadelphia and Baltimore of the commodities embraced in this proceeding is, for the reasons above stated, impossible. It is possible to give the relative cost in the case of full cargo shipments. It is possible to give, within reasonable limits, the relative berth rates; but to combine the two and to say what will for a series of years be the difference in the cost of carrying flour, grain and provisions, and to make that the basis of a differential which will be strictly fair, is out of the question.

Assuming that the differential is intended solely to equalize the difference in ocean rates, we should be of the impression that there is no ground for a different differential at Baltimore than at Philadelphia, for we do not find that the cost of ocean carriage from those ports differs materially, and we should be of the further impression that the present Philadelphia differential just about equaled the difference in berth rates and would be somewhat too high as applied to both berth and cargo business. It should be observed, however, that New York enjoys certain advantages in reference to its berth business in addition to the mere difference in rate. Many ports can be reached in this way from New York which are not accessible at all from the outports. The sailings from New York are much more frequent than from the outports, so that it is possible to deliver small quantities of grain more frequently from that port than from the outports and to sell in many localities which cannot be reached from the outports at all. Just what the measure of advantage to New York in the fraction of a cent per hundred pounds on all the grain exported is, cannot be even intelligently surmised.

Taking this whole situation together, we do not think it could

be fairly determined in advance what differential would be required to offset the advantages of New York over its rivals in the matter of ocean facilities. About all that can be done is to determine within probable limits what that differential should be and then decide from an observance of the actual operation of the differential whether its effect is a fair one.

These differentials were established in 1877, and re-established, and approved by the Advisory Commission, in 1882. The complainants insist that assuming them to have been perfectly fair upon either of the above mentioned dates, they have, owing to changed conditions, become grossly unfair at the present time.

Since the differentials are arbitrary, the rates differ by so many cents no matter what the New York rate may be. An examination of Table No. 22 shows that in 1878, that being the year after the present differentials were fixed upon, the rate on corn from Chicago to New York was about 30 cents per hundred pounds. This would make the Baltimore rate 27 cents, or 90 per cent of the New York rate. In 1882 the New York rate had fallen to 23 cents; and the Baltimore rate would be 20 cents, or about 87 per cent of the New York rate. In 1896 the New York rate was 18.5, and the Baltimore rate 15.5, or 84 per cent of the New York rate. In other words, the gradual lowering of rates since these differentials were established has operated to make the Baltimore and Philadelphia rates relatively less in comparison with the New York rate than they were in 1878 or 1882. If the purpose be to establish a fixed relation between these rates and that relation was correct then, it is wrong now.

So, too, in the matter of ocean rates. It seems to be pretty well established that the agreement of April 5, 1877, fixed the differentials at the present figure for the purpose of equalizing the difference in the cost of ocean transportation. The Advisory Commission in 1882 found a difference in the cost of such transportation which approximately equaled the amount of the differentials. The testimony before us shows that this difference in the cost of ocean transportation has been gradually growing less since 1882. While no change has taken place in reference to full cargo shipments, the difference in berth rates in favor of New York is less now than it was then, so that if the differential is to be deter-

mined upon that basis it would seem that, if right then, it is wrong now.

Again, a given differential has more effect now than when these were fixed. The price of grain in 1882 was more than in 1896. Corn sold in 1882 upon the Chicago market for about 62 cents as against 25 cents in 1896. It appeared in testimony that at the present time a difference in the total expense of exporting corn of $\frac{1}{8}$ cent a bushel was sufficient to divert it from one port to the other, but it was said that in 1882 this would not have been so, since competition in this business had increased and the margin upon which the business was done had grown smaller so that $\frac{1}{8}$ cent a bushel had become a more important factor.

We think this contention of the complainant is well taken. The gradual lowering of rates, the shrinking of values, the increase of competition, have all operated to make the differentials in favor of Baltimore and Philadelphia mean more to-day than they did when agreed upon. A difference of 3 cents per hundred pounds was more effective in drawing export grain traffic through Baltimore in 1896 than in 1882. Just how far this makes out that the present differential is unduly preferential against New York will be considered farther on.

The intervenors earnestly insist that the preference granted to Baltimore and Philadelphia is justified by the fact that those localities are nearer the point from which this traffic originates, and that the expense of rendering the service covered by the transportation rate to Philadelphia and Baltimore is less than at New York. For the purpose of determining to what benefit, if any, these localities are entitled upon the score of distance, the short line to each port must be considered.

In this case the short line from Chicago to New York, Philadelphia and Baltimore is in all cases by the Pennsylvania Railroad, and is 912 miles to New York, 822 miles to Philadelphia and 802 miles to Baltimore. The distance from Chicago to Baltimore is 88 per cent of the distance to New York, and that, when these differentials were first adopted in 1877, was almost exactly the percentage which the Baltimore rate was of the New York

rate. At the present time the Baltimore rate on corn is about 84 per cent of the New York rate.

The complainant says that distance should not be considered as a justification for these differentials because it is habitually disregarded by the defendants and it instances the rates which are made by the defendants in this very case. Thus, the distance to Boston is 1,000 miles while the rate for export is the same as that to New York. Newport News is 94 miles farther from Chicago than is Baltimore, but it takes the Baltimore rate. Norfolk, Va., is 72 miles farther from Chicago than is New York, but it takes a rate 3 cents lower than New York. Now, the complainant says, since these defendants have disregarded the element of distance in the making of these very rates complained of they cannot be allowed to set it up as a justification in the case of a particular one of these rates.

Distance is frequently disregarded by carriers in the making of their rates. The Commission has held that it may be under some circumstances properly disregarded to some extent. It has been repeatedly said, however, that distance ought, when possible, to be regarded, and we have never held that a carrier would be compelled to disregard it for the purpose of putting two communities upon a commercial equality.⁸

It must be remembered that carriers are allowed a certain latitude in this respect. They may within certain limits regard or disregard distance, as their interest demands. If the Pennsylvania Railroad Company, by reason of competitive conditions saw fit to make the same rate to New York and Philadelphia, it is possible that Philadelphia could not insist that such a disregard of distance was unduly preferential, but it is clear to us that if the Pennsylvania Company elects to make a lower rate from Chicago to Philadelphia than to New York, it may show in justification of that rate that traffic for New York must be hauled through and 90 miles beyond Philadelphia. We also think that when New York asserts that the differential in favor of Philadelphia unduly prefers that locality, Philadelphia may reply that its advantage of distance entitles it to a lower rate.

⁸ 6 I. C. O. Rep., 647; 7 I. C. O. Rep., 180.

Distance is recognized as an element in determining the amount of a rate upon the assumption that it corresponds in a degree with the cost of service. It does not, however, necessarily follow that the greater cost of service necessarily goes with the greater distance. It is certain that the expense of transporting grain from Chicago to New York by the Pennsylvania lines is more than from Chicago to Philadelphia, for, by those lines, the transportation is through Philadelphia; but it is quite possible that it might cost less to transport grain from Chicago to New York *via* the New York Central than to Philadelphia, even, by the Pennsylvania. Nothing of that has been gone into in this case, and we are left to assume that the cost of transportation is measured by the distance, for as a general rule, in the absence of exceptional conditions, the greater the distance the greater that cost.

One subject has, however, been considerably discussed both in the testimony and in the argument which bears upon the cost of service, and that is the terminal charges and service at the various ports. It will be seen by referring to the findings of fact that the carrier at Baltimore or Philadelphia ordinarily receives 1½ cents per bushel in addition to the rate for performing a somewhat less service than is performed at New York for the rate. The carrier to New York for putting the grain upon a barge and towing it to the side of the vessel receives the rate, whatever it may be, while the carrier to Baltimore or Philadelphia for a service equivalent to putting the grain upon the barge, without the added expense of lighterage, receives the rate and in addition 1½ cents per bushel. This 1½ cents amounts to more than the differential at Philadelphia, and, if the cost of lighterage be added, to nearly the differential at Baltimore. Apparently this has the same bearing upon the questions involved as has the element of distance.

The defendants do not justify these differentials upon the ground either of distance or cost of service. We do not express an opinion that they could be justified to their full extent upon either of these grounds. They certainly could not in the case of Norfolk and Newport News. But we do think that in this inquiry between the three localities, New York, Philadelphia and

Baltimore, in determining whether there is an undue preference, the advantage which Philadelphia and Baltimore possess in the way of distance should be considered, and that the same is true of the additional expense of delivery at New York.

The Advisory Commission of 1882 was apparently of the opinion that the most satisfactory test of these differentials was the result of their operation. Such must be the opinion of anyone who gives the matter careful attention. The problem is so complex, the factors which enter into it are so numerous and so impossible of exact estimation, that it is difficult of solution by any *a priori* process. Actual observation of the effect of these preferences is the best if not the only means of determining their fairness or unfairness. Complainant unhesitatingly accepts this test and asserts that from this phase of the case more plainly than anywhere else does the justice of its contention appear. Indeed it was the very marked falling off in exportations of grain through the port of New York which alarmed the complainant and led to the prosecution of this proceeding. It is to this aspect of the case that the testimony has been largely addressed upon both sides.

In 1882, about 65 per cent of all the exports from the United States exported through the Atlantic and Gulf ports passed through the port of New York. The same year 80 per cent of all the imports into the United States by way of these same ports came in at the port of New York. It will be seen, therefore, that during that year, being the year when the Advisory Commission pronounced upon the reasonableness of these differentials, New York practically engrossed the foreign trade of this country. A preliminary question is how far is the port of New York "entitled," or how far can that port expect to continue, to enjoy that commercial supremacy.

Plainly not to the same extent. It would be in accordance neither with the theory of our institutions nor with the history of the development of our nation to permit any one port upon our vast extent of seacoast to monopolize the trade with foreign nations.

Within recent years the United States government has expended in improving navigation to and at the port of Philadel-

phia about \$9,500,000; at Baltimore \$3,600,000; at Galveston \$8,500,000; and at New Orleans, or upon the Mississippi River, of which New Orleans takes the benefit, about \$8,000,000. These vast sums have not been appropriated and expended certainly upon the theory that it was desirable for the foreign trade of this country to flow through the port of New York alone. Rather does this recognize it as the policy of our government that its foreign commerce should be distributed between various ports.

Such is also the inevitable tendency of the development of our country. Hitherto that development has gone on in such a way that New York has been enabled to seize more of our export and import trade than would naturally belong to it. The lines of transportation leading to New York and the pecuniary interests concentrated at that point have been so strong as to divert both export and import traffic to that port which might naturally go to some other port. These same influences will unquestionably continue to have the same effect in the future, but not to the same extent. Other strong influences are beginning to operate in favor of other ports.

The distance from Chicago to New York is about the same as to New Orleans, and the water communication between Chicago and New York will, during certain seasons of the year at least, give New York an advantage as to traffic which fairly originates at Chicago. But a glance at the map of the United States shows that the grain-producing territory, much of it, lies between New Orleans upon the south and Chicago upon the north, and is most of it nearer New Orleans than New York. When this export corn moves to Chicago it moves away from New Orleans, or at least not towards it; and the same thing is true of much of the export wheat. The distance from Kansas City and St. Louis to New Orleans is less than two thirds that to New York. The Mississippi River and its tributaries give access to all this region.

A year ago the Commission inspected the terminal and harbor facilities at New Orleans. Its docks are already extensive and are capable of almost unlimited extension. There is no place in the United States, with possibly one exception, where grain can be transferred from the car to the vessel more cheaply than

here. The grade from the grain fields to these elevators is an easy one. The corporations which operate the lines of railway leading to them are strong and aggressive. They will undoubtedly demand a larger portion of that traffic which is tributary to them, and will gradually acquire more and more of it, and this in its turn will bring to New Orleans a certain amount of those importations which now reach New York. The same thing is and will be true of Galveston and other ports. New York cannot expect, therefore, to occupy the same relative position of supremacy with reference to our foreign commerce in the future that it has in the past.

This is indicated by actual results up to the present time. In 1882, of all wheat, corn and oats exported through Atlantic or Gulf ports, 51.1 per cent passed through New York and 5.8 per cent through the ports of New Orleans, Norfolk, Newport News and Galveston; while in 1896, 26.9 per cent passed through New York, and 31.3 per cent through the four ports above named. From one half the whole, New York has fallen to one quarter, and from practically nothing, these four ports have risen to about one-third.

It would, however, be unfair to the position of the complainant to state that it was insisting in this proceeding upon the right of New York, as against the whole country, to retain the proportion of the export grain traffic which that port has formerly done. In 1896 of the grain and flour exported through the six Atlantic ports, Norfolk had 7.5 per cent and Newport News 10 per cent. Until 1890 practically nothing had gone through these ports. Export business is done through them now because lines of transportation have been opened up and strengthened from the West to these points and extensive terminal facilities provided. Now it does not seem to be the contention of the complainant that a portion of the export grain ought not to pass over these lines and through these ports; nor is there any claim that these two ports should not be allowed the same differential, if any, as Baltimore. The complainant insists that each port is entitled to what it can fairly obtain, and that these differentials give to the southern ports an unfair advantage. The evidence of that is not that Norfolk and Newport News, owing to recently provided facilities,

have increased their grain exportations, but that Boston, Philadelphia and Baltimore have, under the operation of these differentials and without the assistance of any new advantageous conditions, gained as against New York. In other words, the complainant says that the fair test of these differentials is their actual working as observed at these four ports where the conditions have remained the same, and it is to these ports that they direct attention.

For the purpose of comparison the complainant has selected the years 1882, 1895 and 1896. The alleged reason for this is that 1882 was the year of the Advisory Commission when the present differentials were approved, and 1895 and 1896 the last two years next preceding this investigation.

The last half of Table No. 6 gives the percentages of exports of wheat, corn and flour, from New York, Boston, Philadelphia, Baltimore, Norfolk and Newport News for the years 1873 to 1896, inclusive. Those percentages for the years in question are as follows:

	1882.	1895.	1896.
Boston	9.6	13.1	12.7
New York	61.5	47.6	33.7
Philadelphia	7.5	7.	9.5
Baltimore	20.7	19.8	26.6

The complainant says that a comparison of 1882 with 1896 shows, roughly speaking, that New York has lost one half its export business, that Boston has gained one third, Philadelphia one fourth, and Baltimore one fourth. While that is the showing which results from a comparison of these two years, it is not a fair deduction from the table itself. In the first place 1882 is, of all the years since 1875, that year in which the percentage of New York was the largest, that year in which the percentage of Philadelphia was smaller than it had been for eight years before, and smaller than it was again for five years to follow; the percentage of Baltimore smaller than it had been for six years preceding, and smaller than it ever has been since, except in the year 1895, when it was a trifle lower.

Excluding from our consideration the year 1896, we observe that the percentage of New York in 1895 was larger than it had

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been in 1894, 1892 or 1890, and but 12 per cent below the average from 1873 to 1896; that the percentage of Philadelphia in 1895 was smaller than it had been in any year since 1875, except the years 1888 and 1889, and 36 per cent below the average; that the percentage of Baltimore for that year was smaller than it had been since 1875 and about 13 per cent below the average. The percentage of Boston was more than it had ever been except in the years 1888 and 1884, and about 42 per cent above the average.

If, therefore, this case had been tried in the spring of 1896 instead of 1897, the tables being brought down to the close of 1895, instead of to the close of 1896, it would hardly be claimed that those tables disclosed any undue diversion of traffic from New York to either Philadelphia or Baltimore. Baltimore could have with truth asserted that its percentage for that year was smaller than it had ever been before and more below the average for the last twenty years than that of New York, while Philadelphia might well have said that its percentage for 1895 was less than one half what it had been in 1878 and 36 per cent below the average for the last twenty years. Boston alone would have been the gainer, but Boston has never enjoyed a differential.

But a comparison of the year 1896 with 1895, or indeed with almost any previous year, makes an entirely different showing, and the complainant insists that in this proceeding the results for the year 1896 are entitled to more consequence than those of any one or indeed all the previous years.

Its position apparently is that while these differentials nominally existed from 1877 down to January 1, 1896, they never were actually maintained until the latter date. Of course, the mere existence of these differentials, if they were not in fact collected, could have no effect to divert traffic one way or the other, and if we were satisfied that there had been no differentials in effect down to January 1, 1896, and that these differentials had gone into effect on that date and had since that time been rigorously enforced with the result upon the export traffic of these various ports which that year apparently exhibits, it would certainly present a strong case for the complainant.

We are not, however, as indicated by the findings of fact, satisfied that this is true. The testimony of the complainant con-

clusively shows that rates were not maintained in the year 1896. From that testimony it appears that grain could be purchased at Philadelphia and Baltimore at times for more than 3 cents per bushel below the price at New York, while at other times the price would be practically the same or occasionally in favor of New York. Now, the price of grain is determined by the Chicago market, and the price in these various ports is obtained by adding to that price the freight rate. The Baltimore differential is less than $1\frac{1}{2}$ cents per bushel. It follows, therefore, almost of necessity that these fluctuations indicate manipulations in the rate. When corn is worth the same price in Baltimore and New York the presumption is that the differential is not maintained, and when corn is worth 3 cents a bushel less in Baltimore than in New York the presumption is that a greater difference than the differential has been made. In support of its proposition the complainant relies mainly upon testimony of Mr. Blanchard, the commissioner of the Joint Traffic Association. Mr. Blanchard testified that he had been familiar with freight rates since before 1878 and that in his opinion those in question were better maintained beginning January 1, 1896, when the Joint Traffic Agreement went into effect, than they had been at any previous period except for the year or year and a half following the enactment of the Act to Regulate Commerce. This Act went into effect April 1, 1887, and if we were to give Mr. Blanchard's testimony its full effect it would still remain that rates were as well maintained in 1887 and the first part of 1888 as they were during the year 1896. This being so, and no reason being suggested to the contrary, it is fair to assume that the maintenance of the differential would have produced the same effect in 1887 and the year following that it did in 1896. We should expect to find, therefore, the same remarkable falling off at New York and the same increase at Baltimore and Philadelphia. But upon turning to complainant's Table No. 6 we find that the percentage of New York in 1887 was 53.9, an actual increase over the preceding year, and just about the average from 1873 to 1896 inclusive; that the percentage of Philadelphia was 10 per cent, an increase over the previous year but below the average; while that of Baltimore was 23.3 per cent, a falling off as to the previous year. During the

year 1888, while the salutary effect of the Interstate Commerce Law may be presumed to have still lingered, we find that New York had further increased its percentage to 54.2, while Philadelphia had fallen to 6.2, the lowest in her history, and Baltimore had risen to 24.5. The effect of enforcing the differential in 1887 and 1888 was apparently to raise rather than to lower the percentage of New York. We see no reason for giving the year 1896 any greater prominence than is given to every other year.

For the purpose of comparing the four ports Table No. 14 is perhaps the best. That does not include exportations of flour, but it has been already observed that flour and provisions are exported entirely by berth rate and an examination of the tables covering those articles shows that New York has little if anything to gain by an investigation into the movement of these commodities. From the nature of the case the differential produces the most effect in the movement of grain. This table, therefore, which embraces only wheat, corn and oats, is as favorable to New York as any can be. The years covered are 1878 to 1896, inclusive, so that the movement of these articles is exhibited over substantially the whole period during which the present differentials have been in operation.

An examination of this table shows in the first place that the percentages of these four cities vary from year to year, and that this variation, so far as can be observed, does not obey any rule or law. It might be thought, inasmuch as the differential operates especially in the case of full cargoes, and as full cargo shipments are more numerous when exports are large, that the percentages of New York and Boston would decline and the percentages of Philadelphia and Baltimore would rise in those years when the total exports were the largest, and this may be to some extent the case; but it appears that in 1890 and 1891 the total volume of exports through these four ports was almost identical while the difference in the percentage between New York, Philadelphia and Baltimore was nearly as great as in any other two years down to 1896. A study of these fluctuations emphasizes what has already been said in the findings of fact, namely, that the conditions governing the price of ocean freights and the movement of this grain are so complex that it is impossible to predict

from the knowledge of any one factor, like the quantity of the exports, what channel they will take.

It is apparent in the second place that it is altogether unsatisfactory to compare any single year with any other year and that any deduction from such a comparison is almost certain to be misleading.

Suppose the port of Philadelphia in 1888 had complained that the differentials in its favor were not sufficient and had cited in illustration the fact that its exports had fallen from 12.04 the previous year to 4.42 per cent that year, and that the exports from New York had risen from 60.59 to 65.58 per cent its case would have been almost as strong as that made by the complainant, and yet in the year 1890 the percentage of New York had fallen to 49.31, while that of Philadelphia had risen to 18.42, and that of Baltimore to 26.38. In 1891 New York had again risen to 63.75 while Philadelphia had fallen to 9.82 and Baltimore to 19.65; and in 1892 New York had once more fallen to 48.79, while Philadelphia had risen to 19.95 and Baltimore to 24.24.

A comparison of averages is somewhat more satisfactory. Table No. 13 embraces the ports of Portland, Norfolk and Newport News in addition to the four under consideration, and states the percentage of each to the group for the period of 1878 to 1881 inclusive, and from 1882 to 1896 inclusive. By reference to this it will be seen that the percentage of New York for the first period was 51.76 and for the last period 51.16; of Philadelphia for the first period 15.13 and for the last period 10.76; of Baltimore for the first period 25.05 and for the last period 23.20. These averages do not indicate any falling off in the case of New York and do indicate a very large falling off in the case of Philadelphia and a slight decrease in the case of Baltimore.

None of these tables are absolutely correct, nor are they in all cases quite consistent with one another. It is also possible to marshal these figures in such a way as to point to radically different conclusions. Generally speaking, however, the tables do agree in their main features, and the trend of all these statistics is to the same conclusion. Taking the whole period together from 1878 down to the end of the year 1896, it is pretty apparent that of these four ports as compared with one another Boston has been

a decided gainer, Baltimore has made a small gain, while New York and Philadelphia have both lost, and as between these two, Philadelphia has been the greater loser. Compared with the entire group New York has lost.

If, instead of considering the entire period, we were to take the year 1896 alone, the result would be entirely different, but it has been already said that no special prominence can be given to that year over any other year, certainly not over the years 1887 and 1888. One very great embarrassment in disposing of this case arises from the feeling that these rates have not been maintained, and that there is no reliable indication in actual practice of what the effect of the differentials would be if strictly enforced. This is no reason why we should not alter the differential if it was found to be wrong, for we must assume that the published rate is collected, but when the effect of the differential is relied upon to show the wrong, and it is claimed that the differential has been enforced in a particular year and has not been enforced in other years, that fact must be clearly established.

The results of the year 1896 show a very unusual percentage in favor of Baltimore and a large increase in favor of Philadelphia, and it is our impression that these two ports will perhaps obtain in the future rather more than their average for the last twenty years. But this impression is based not upon any deduction from these tables but upon the further impression that the lines leading to Baltimore are in a position to demand more of this traffic than they have obtained at least in recent years, and that the port of Philadelphia will not, when the improvements in the Delaware River give it deep water to the ocean, and perhaps ought not to rest content with the small amount of foreign trade which it has enjoyed in the past. If these ports gain, it must be largely at the expense of New York.

Now, upon the whole situation, does the complainant make out a case? Can it be said that these differentials unduly discriminate against the locality of New York? We have stated it as our impression that the difference in ocean freight rates at the present time was something less than the amount of these differentials, and that the gradual change of conditions since 1877 makes the differentials of more effect to-day than when they were instituted.

These two circumstances would point strongly to the conclusion that they ought to be modified. There is, however, one other circumstance that should be noticed in this connection.

These differentials apply upon all classes of freight and accordingly upon all commodities. In the very nature of the case they cannot be abstractly just, but only fair in the aggregate result. Their purpose is to give to each line its fair share of export business. Many other commodities are exported besides those embraced in this proceeding. In case of grain the freight rate is a very large factor in its value, while in case of other exports it may be insignificant. A differential which determines the route by which grain shall be exported would have no effect whatever upon some other article. These higher grade exports go almost entirely to the port of New York, from which they find quicker service to all parts of the world, and from which they can only find communication with many parts of the world. Now, if the quantity of these exports, which the differential does not divert to Baltimore or Philadelphia, has been increased in late years, it is manifest that this offsets to that extent any increased diversion of grain to the outports. The freight rate which these other exports pay is higher, and it is therefore more for the interest of the carrier to transport them. The ocean rate is also higher, and the advantages to the port of New York in the way of attracting shipping are probably greater than arise from the exportation of grain. So it is by no means certain that more grain ought not to go through the outports to offset the increased exports of other kinds from New York.

That this may be so is indicated by Table No. 9, which gives the total quantity of traffic forwarded by all lines to these four localities for the years 1888 to 1896 inclusive. From this it appears that during these eight years the total number of tons had increased 42 per cent in the case of Baltimore, 97 per cent in the case of Boston, 63 per cent in the case of New York, and but 2 per cent in the case of Philadelphia. These figures include both domestic and foreign traffic and are not therefore of great significance as bearing upon this question, but they show that traffic over the lines leading to New York has, during the last eight years, increased more in proportion than that over those leading to Baltimore and Philadelphia.

Table No. 15 perhaps bears more directly upon this suggestion. This table gives the percentages of the value of all exports from Boston, New York, Philadelphia, Baltimore, Norfolk and Newport News from 1878 to 1896 inclusive. From this it appears that New York exported in 1878, 69.26 per cent as against 60.34 in 1896; Philadelphia 9.42 as against 7.68; and Baltimore 9.63 as against 11.63; it further appears that the percentage of New York in 1892 was but 59.97 while in 1896 it was 60.34. From this it seems that New York exported in 1896 almost the same proportion in value that it did in 1878, and that its percentage that year notwithstanding the very great falling off in grain exportations, was more than it had been in at least one previous year and substantially the same as it had been since 1890.

It seems to be true that New York is in a measure losing its export grain business. But does it follow upon the testimony in this case that this is due to the operation of these differentials?

It must be borne in mind that the grain of New York does not reach that port from the interior exclusively by rail. The canal has brought in the past a very considerable portion of that traffic, and it is to this water communication between the West and the East that New York has largely owed its predominance in the foreign trade. Now, these differentials have nothing to do with grain moving by canal. Their purpose is merely to divide fairly between the different competing lines the export business which moves by rail. If for any reason the canal were to be entirely shut up so that no grain could be transported by it, it would by no means follow that all the grain which had formerly come to New York by canal ought now to come there by rail. Quite the contrary. This canal traffic ought now to be distributed in the same proportions over the various lines leading to the different ports. New York has no vested right in the having of so much grain shipped to that port. The canal has been a most important element in her commercial supremacy. If that element drops out, she must expect to lose that portion of her supremacy which was due to it.

The first half of complainant's Table No. 6 shows the percentage of all wheat, corn and flour in bushels transported to the six ports in question, from the year 1873 to the year 1896, inclu-

sive; and with reference to New York these percentages are stated both by rail and by canal. Thus, in 1877, when these differentials were agreed upon, the rail carriers transported to New York 25 per cent and the canal 26.5 per cent of the entire amount going to all the ports, and for the whole series of years the rail lines have averaged 32.4 per cent and the canal 19.6 per cent. In the year 1896 the rail lines carried 30.3 per cent and the canal 6.3 per cent, that is, of the great falling off at New York, the bulk of it was in canal carriage. If the canal had transported in 1896 the same percentage that it did in 1877 the grain exports through New York would have been relatively larger that year than the average, and if it had transported even the average quantity, they would have shown no remarkable falling off.

As already suggested, these differentials are intended to secure to the rail lines a proper distribution of this traffic, and we find that under their operation in 1895 those lines carried to New York a larger per cent of all the traffic to these six ports than they had ever carried save in the year 1891, which was substantially the same. Can it be said, therefore, that their operation as applied to the traffic which they properly affect, has been unfair in the result? The great supremacy of New York in the past has been measurably due to its canal. If it would hold that supremacy in the future, it must give attention to that same waterway. The testimony of Captain Depuy as to excessive elevator charges upon canal grain is not material to this investigation, but it is extremely suggestive in connection with the facts above referred to. If the canal were to be restored to-day to the same position in this carrying trade that it has occupied in the twenty years past, the commerce of the port of New York could not suffer.

The Baltimore differential presents the most difficult question. To every practical intent the cost of ocean freights from Baltimore is no greater than from Philadelphia; nor did it appear that Philadelphia afforded other advantages over Baltimore in the transaction of this export business. What ground is there then for a distinction between those two ports?

The representatives of Baltimore strenuously insisted that the proximity of that port to the corn area was such that, by reason of the greater advantage in the way of distance, it was entitled to

more of this business. An examination of Table No. 14 shows that in recent years at least the percentage of corn exports through Baltimore has been larger than of wheat. The great advantage of Baltimore in 1896 rested in the very great increase of corn shipments. It is a significant fact that the distance differentials which were in force for a short time in 1877 seem to have been unsatisfactory to the New York lines, not because the difference in the percentage of the distances from Chicago gave to Baltimore too great an advantage, but because the distances from other points were in favor of that city. The differential which Baltimore obtained upon the Chicago rate by the distance differential was almost exactly what was obtained under the arbitrary differential, but when the distance differential was applied to all points from which traffic originated, Baltimore seems to have profited to such an extent thereby that this system only remained in force for a very few months. This would indicate that possibly the traffic does originate at points relatively nearer Baltimore than is Chicago. How far this fact may be recognized in the present system by which rates from western points are based upon a percentage of the New York-Chicago rate, does not appear.

The testimony tended to show that the corn exported at Baltimore did not come from Chicago, but was intercepted before it reached that market. If, in point of fact, Baltimore is in closer proximity to the corn fields from which these exports come, and if the lines leading to that port have secured recognition of that fact in these differentials, we certainly should not disturb them, for they are a recognition of an advantage in location to which Baltimore is fairly entitled.

No claim is made as between Baltimore and Philadelphia, that the present relation should be disturbed. As between those two cities and New York, it might not be altogether easy to say whether, on the case presented, the Philadelphia differential should be raised or the Baltimore differential lowered. It might be that in justice to the city of Philadelphia we ought to make that differential more rather than the Baltimore differential less.

It must be remembered, moreover, that to the solution of this question no absolute standard can be applied. In recognizing

competitive conditions of this kind the carrier has a certain latitude within which this Commission cannot interfere. It is only when that limit is exceeded and when the action of the carrier becomes undue that we can act. In the last utterance of the United States Supreme Court on this subject, *Interstate Commerce Commission v. Alabama Midland R. Co.*, 168 U. S. 144, 42 L. ed. 414, it was held that the Alabama Midland Railway might charge a higher rate to Montgomery, the more distant point, than it charged to Troy, the nearer point. This was upon the ground that Montgomery was a railway center and that the competitive forces at that point might be recognized in the making of rates. Suppose now that the Alabama Midland Railway Company had elected to charge the same to Montgomery and to Troy, could the locality of Montgomery have insisted, in a proceeding before this Commission, that Montgomery was entitled to a better rate than Troy? Clearly not. Whether the carrier will or will not meet those competitive conditions and to what extent rests primarily with it, and its action in that respect is not subject to review by this tribunal so long as it is due and reasonable. Whether it is due or reasonable is, however, a matter of judicial investigation and determination by the Commission and the courts.

While there is much in the case to induce a different conclusion, and while we have arrived at this conclusion with a good deal of hesitation, we do not think that, upon the present record, the carriers have exceeded the limit within which they are free to determine for themselves. The principle upon which these differentials have been established is legitimate. Looking to the basis of the differentials themselves, while there is much to indicate that they should, perhaps, be somewhat modified, it cannot be affirmed with certainty that they are wrong. Considering their effect as exhibited through a long series of years, it is impossible to say that they have exercised any untoward or unnatural influence upon traffic. We do not think, therefore, that they should be disturbed by us.

The Act to Regulate Commerce does not aim to fetter competition, nor interfere with the natural flow of trade and commerce. One cardinal object of that Act was to secure perfect freedom of competition among the carriers themselves. It is only when that

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competition becomes tyrannical, so to speak, when in the competitive struggle localities, commodities, individuals are in danger of being crushed that the law steps in. In the very nature of things it can seldom happen that the powerful commercial center has occasion to invoke the law for protection against its weaker rivals. The lines which extend to the port of New York are numerous, powerful, and aggressive. It is difficult to believe that those lines will ever suffer any great or permanent injury to the commerce of that port, when in permitting that they must submit to a depletion of their own revenues. It might happen that some combination of these lines, for the purpose of promoting their interests at some other point, would sacrifice the port of New York, or that for the purpose of promoting their interests as to some other kind of traffic they would sacrifice this particular traffic. If anything of that sort were apparent, if there seemed to be anything arbitrary, anything unreasonable, any undue preference against this locality or this species of traffic, it would be our duty to correct it. But there is nothing of that kind and we can do no better than to leave this matter where competition has left it.

In coming to this conclusion we have perhaps been somewhat influenced by the fact that the consequence of an error in this direction is not as serious as one in the other direction might be. The pecuniary importance of these differentials to the carriers interested has already been suggested. Their importance in the distribution of traffic may be even greater. If it were possible to abolish them altogether and absolutely enforce the same rate to all these ports, it might so deplete the revenues of lines to southerly ports as to render practically valueless the outlay of enormous sums spent in their development. Upon the other hand, if we wrongfully refuse to interfere, it simply follows that foreign trade which ought to pass through New York is diverted to some rival port. This, considering the manner in which this export grain business is conducted, does not mean the breaking down or the building up of any industry. It destroys no capital invested, it renders no dock and no ship useless. At the most, it simply determines where some new dock shall be built. If this were a question of an unreasonable rate, where the thing com-

plained of was the exaction of more than a just compensation by the carrier, where whatever the carrier gained unjustly was necessarily paid by the public, the consequences of an error would be more evenly balanced.

Again, if we have made an error, it is in favor of the weak and against the strong. New York may have lost somewhat in the matter of its foreign commerce, but it is still immeasurably in advance of all rivals. As appears from Table No. 19, which is brought down to January 1, 1898, in the year 1897 New York had 47.43 per cent of all the exports moving out through the Atlantic and Gulf ports of the United States and 74.06 per cent of the total imports moving in through those same ports. It is almost impossible for us to feel that a locality which engrosses one half of all the exports and three fourths of all the imports upon the Atlantic seaboard can justly complain of any undue diversion of its commerce. The population of Greater New York is said to be about 3,000,000; the population of Philadelphia, distant less than 100 miles, is 1,200,000. In 1897 the imports of Philadelphia were about one tenth and the exports about one eighth of those at New York. Can it be said that Philadelphia is unduly preferred to New York in respect to this foreign trade?

Nothing has been said in the disposition of this case touching the ex-lake differentials as such. These apply, it will be remembered, to traffic originating in the West, brought by water to various points upon the southern shore of Lake Erie or corresponding points and from thence transported by rail to the ports in question. The complainant insists that whatever may be said of the all-rail differentials these are absolutely indefensible since the distances to Baltimore, Philadelphia and New York are practically the same.

If the justification for the all-rail differentials were found in differences of distance, that would be true. It appears, however, that while distance is an element which may be taken into account in inquiring whether those differentials are undue and unreasonable, it is not the ground upon which they are made. This ex-lake traffic originates at the same points with the all-rail traffic and is, therefore, properly regarded as competitive. Looking to the differential itself, we find that no distinction is made between

Baltimore and Philadelphia, thus removing what seemed to be the most serious objection to the all-rail differentials. We also find that the amount in one hundred pounds is but 1 cent against New York. There are in force commodity rates on grain by the bushel which, when translated into rates by the hundred pounds, amount to about 1½ cents per hundred pounds against New York, upon wheat, corn and oats. This probably does not exceed the difference in cost of ocean carriage. If, therefore, our decision in reference to the all-rail differentials is correct, it seems to follow all the more that the ex-lake differentials should not be disturbed by us.

Neither have we considered the legality or propriety of the Joint Traffic Association, for the reason that those questions are not involved in this proceeding. If that association is in violation of some other statute of the United States, we have nothing to do with it. If it is in violation of the fifth section of the Act to Regulate Commerce, as a pooling arrangement, then we might upon proper proceedings order the carriers to cease and desist from further maintaining it. Such is not directly nor indirectly the scope of this proceeding. The existence and methods of that association could only become relevant in this case with a view to finding and enforcing a remedy if one was called for. Since we have found no infraction of law, no remedy need be sought, and all questions in regard to that association become immaterial.

In arriving at these conclusions the year 1896 has been treated the same as previous years covered by the investigation. If the diversion of export grain from the port of New York, which is shown to have taken place in that year, should continue in subsequent years, and it should appear with reasonable certainty that the published rates had been maintained to all the ports, the actual effect of these differentials upon the movement of grain could be determined with confidence and a different question would be presented, which might merit further consideration, and of which the disposition of the present case would not be controlling.

The complaint is dismissed without prejudice.⁴

⁴ 7 I. C. C. Rep., 656-85.

In 1905 the Atlantic ports, Baltimore, Philadelphia, New York, and Boston, again found themselves in a controversy over the matter of port differentials. The carriers particularly interested in certain ports supported the claims of its commercial center, of course. On voluntary submission of the controversy to the Commission by all parties, domestic traffic was excluded from consideration. The Commission held that the differentials on flour should be reduced to 2 cents per 100 pounds at Baltimore and 1 cent at Philadelphia, and that the differentials on ex-lake grain through certain Erie ports should be reduced to three-tenths of a cent per bushel and be allowed both to Baltimore and Philadelphia, and that otherwise the port differentials current at that time should remain in force. The Commission overlooked the fact that the weight of oats per bushel is approximately one-half that of wheat, and in a memorandum attached to the decision it was suggested that the differential on oats should be reduced. The decision was written by Commissioner Prouty, who had rendered the earlier decision quoted from above. It is interesting to note that his later decision was based not on whether the differentials were lawful, as in the former case, but whether they were fair considering the interests of all parties. With this in view the slight modifications of the differentials on grain and flour are in keeping with justice and are the changes that might have been expected. Commissioner Clements, however, dissented on the ground that the Commission should not prescribe the differentials but should leave that adjustment to competition. The facts and principles underlying this controversy are so well set forth that the conclusion of Commissioner Prouty is reproduced in full.

CONCLUSIONS.

The controversy before us relates to what are known as the "Port differentials" and is one of long standing. The dispute began when rival lines of railway first connected the west with the four Atlantic ports involved. It has produced numerous rate wars, has been the subject of arbitration, has been considered by this Commission upon complaint of one locality and is now under investigation by us again at the general request of the four ports especially interested and of many interior shippers.

The question itself is readily comprehended. That section bounded on the east by a line drawn from Pittsburg to Buffalo, on the south by the Ohio River, on the west by the Mississippi River and on the north by the Great Lakes and a line drawn west from Chicago to Dubuque is known as differential territory. Rates between points in this territory and New York city are based upon the Chicago-New York rate; that is, the rate between any point in this territory and New York is either the same as the Chicago rate or a certain percentage of that rate. To other points upon the Atlantic seaboard the rate is higher or lower than that to New York by a given number of cents per hundred pounds. Rates upon all classes and all commodities, with the exception of grain and iron articles, are 2 cents lower to Philadelphia and 3 cents lower to Baltimore than to New York. To Boston rates are the same as to New York on export traffic while on domestic traffic they are higher by arbitrary amounts ranging from 7 cents per hundred pounds on first class to 2 cents on sixth class and most, if not all, commodities. These arbitrary differences above or below the New York rate are termed in this proceeding differentials. No question is made as to the propriety of these differentials on domestic traffic but it is insisted that they should not be allowed on export business.

It should be observed that while these differentials apply in theory only to traffic from differential territory they in fact apply to all traffic which passes through this territory. A glance at the railroad map of the country shows that this includes virtually all traffic which, originating west of Buffalo and Pittsburg, passes out through the Atlantic ports north of Norfolk;

and it will further be seen by reference to the tables given in the findings of fact that this embraces a very considerable part of the rail movement by which our entire exports reach the seaboard.

When the Commission examined this subject in the *Produce Exchange Case*, 7 I. C. C. Rep. 612, its only function was to determine whether the Act to Regulate Commerce had been violated. Our relation to the subject to-day is a broader one, certainly if we comply with the request of the petitioners at whose instigation this proceeding was instituted. We are to say, not whether these differentials are lawful merely, but whether on the whole, considering the interests of all parties, they are fair. Counsel for the city of New York in commenting upon this remarked that this controversy might, therefore, for the first time be settled upon correct fundamental principles. We have endeavored to find some fundamental principle by the application of which this dispute might be laid at rest, but entirely without success. It is said that a fair differential is one which would give to these several ports the traffic to which they are entitled. It is also said that these several ports are entitled to what of this traffic they can obtain under a fair differential. New York urges that its facilities upon the ocean must not be interfered with, while Baltimore and Philadelphia assert with equal positiveness that they must not be deprived of their advantages upon the land. While there is no fundamental principle, however, which can be applied there are certain fundamental considerations which should be kept in mind.

If it can be properly done, these ports should all be kept open for the transaction of this export business upon such terms that each one may fairly compete for it. No marked advantage should be given, certainly not by the creation of artificial conditions, to any one port over the other. The ideal condition would be the establishment of such rates that enterprise at either port in the way of improvement in service or facilities might be rewarded by increased business and that there might exist that healthy struggle of locality against locality which is the best security for proper commercial development. This is justly demanded by the interests of the communities involved.

In disposing of this question the interests of the carriers which serve these communities should be none the less kept in view. If, again, it can be properly done, these rates should be so adjusted that this competitive traffic will be fairly distributed between the different lines of railway which serve these ports. Each one of these four cities is reached by two or more great railway systems. The prosperity of these cities and systems cannot be separated. The ability of a railroad to adequately discharge its duty for a reasonable charge depends upon the business which it can obtain, and no one of these systems should be deprived of its fair portion of this enormous export traffic. The purpose of these differentials from the first has been to distribute this business between the different carriers and we said in our former report that this was not improper unless the means used were improper.

It should be noted that this discussion is confined entirely to the four ports, Boston, New York, Philadelphia and Baltimore. While others are directly affected by these differentials they have not been represented upon this hearing and are not considered except in so far as it may be necessary to keep in mind the effect of our conclusions here upon conditions elsewhere.

No fact has been more persistently urged upon our attention than the location of Baltimore and Philadelphia, as compared with New York and Boston in point of distance. Baltimore is 111 miles and Philadelphia 90 miles nearer than New York to Chicago. The greater part of the traffic to which these differentials apply does not originate at Chicago, but we have seen that Chicago may be taken as a representative point of origin without injustice to New York. This difference in distance, if there were no competitive conditions, would justify a lower rate to Philadelphia and a still lower rate to Baltimore.

These differentials have undoubtedly been established in the past with a view almost entirely to their influence upon the movement of export business. It is, however, of importance that rates between these cities and the West should be fairly adjusted with respect to domestic traffic. If the supplies with which the artisans of Baltimore work and upon which the population of Baltimore lives are transported for a less cost from the West to

Baltimore while the products of its factories are sent back at a less cost to be consumed in the West, this would be an important element making for the prosperity of that locality as compared with other localities where the cost of transportation was more. Now if there had been no export business in the past, if these domestic rates had been adjusted solely with a view to what was right between the communities, it is altogether probable that the differentials in favor of Baltimore and Philadelphia would have been even greater than they are to-day. When the differential on grain was reduced in 1899 and again when that on iron articles was halved in 1904, the former differences on domestic rates were left in effect. There can be little doubt, and we have so stated in the findings of fact, that a fair recognition of the advantage of these two southern ports in the matter of distance would entitle them to as great a differential as three cents to Baltimore and two cents to Philadelphia.

It should be further noticed that not only have these communities, when considered as points of final destination, a right to a lower rate than New York on traffic from this territory, but the carriers which transport that traffic may properly exact from shippers to New York a higher rate, if they see fit. The Pennsylvania Railroad is the short line to New York. Traffic over that line for New York passes through Philadelphia and 90 miles beyond. The expenses of delivery at New York are materially more than in Philadelphia. There is no just principle which would compel this company against its will to apply at New York the same rate as at Philadelphia when the cost of rendering that service is distinctly greater. It might as a matter of competition see fit to do so, but it could not with justice be compelled to.

If these differentials fairly recognize the advantages of Baltimore and Philadelphia, upon what theory can they be reduced or abolished? It is said that these cities labor under certain disadvantages in the way of water transportation as compared with New York and Boston. Now, what can be more just than to give to each port the inland rate to which its location entitles it and to let it obtain such portion of this export traffic as its ocean facilities can win for it? Does not this award to each locality

the exact benefit of its location and is not any other rule to an extent unjust?

The answer is found in the fact that this traffic does not stop at the seaboard but is carried to foreign destinations. The port of export is but a single station as it were upon the through line.

This traffic in point of fact originates at a great number of interior points and reaches numerous foreign destinations, but we may assume for the purpose of illustration that it all comes from Chicago and all goes to Liverpool. It is apparent that it may be transported between these points by any of the four ports in question. The distance by rail is somewhat shorter to Baltimore and Philadelphia than to Boston and New York. Upon the other hand the water distance is somewhat less from Boston and New York than from Philadelphia and Baltimore. The entire through distance does not greatly vary. In other words this traffic is fairly competitive and rates ought, therefore, to be so adjusted that rival routes can fairly compete for it.

Apply for a moment the rule suggested by Baltimore and Philadelphia to the movement of this traffic. The domestic rate to Baltimore is three cents lower and to Philadelphia two cents lower than to New York. The domestic rate to Boston is two cents higher than to New York upon low grade freight and considerably more upon the higher classes. Now, what would be the result if carriers were compelled to charge their domestic rates upon export traffic? Plainly it would shut up the port of Boston. This fact has been obvious from the first, and it has always been conceded that export rail rates to Boston might be lower than domestic rates and not higher than export rates to New York. This was so specified in the agreement of 1877. It was recognized as necessary by the award of the Advisory Commission. It has been formally approved in two instances by this Commission; *In the Matter of the Export Trade of Boston*, 1 I. C. C. Rep. 24, 1 Inters. Com. Rep. 25; *Kemble v. Boston & Albany Railroad Company*, 8 I. C. C. Rep. 110. Nothing can be more certain than that these inland rates upon export traffic should be treated as a part of the entire through rate.

The real question is on what basis shall rates be equalized through the various ports. New York and Boston insist that

the through rates should be made the same in amount by all the ports. The through rate is made by adding together the inland rail rate from the interior to the port of export and the water rate from the port of export to the foreign destination. These localities contend that if the water rate from a given port is higher the rail rate to that port may be correspondingly lower, but only sufficiently lower to make the through rate the same. They further contend that water rates are in fact substantially the same from Baltimore and Philadelphia as from Boston and New York, and that, therefore, the inland rail rates to those ports should also be the same. Baltimore and Philadelphia urge that there are certain advantages at New York and Boston in the water route which upon the same through rate would attract traffic to those ports at their expense, and they urge that these advantages shall also be equalized so that not the through rate but the advantages of transportation through the several ports shall be made equal.

The purpose is to permit these carriers and the ports which they serve to compete for this traffic. The rates are to be so adjusted that there can be fair competition for this business via all the ports, so that no one shall possess a distinct advantage over the other. To accomplish this result Boston is allowed to charge a lower export rate than its domestic rate. New York is also permitted in some instances to apply a lower differential to export than is fixed for domestic traffic. Now, when New York is allowed to reduce this differential on export traffic there is taken away from Baltimore a part of its natural advantages for the benefit of New York in order that New York may compete for this traffic. But just as Baltimore has an advantage in distance, so New York has certain advantages in ocean facilities. If now Baltimore is required to sacrifice its superiority upon the land for the benefit of New York why should not New York be required to give up some portion of its superiority on the water for the benefit of Baltimore?

We do not wish to be understood as saying that this principle should be extended to the making of rail rates between competing lines. It may be that in such case the rate by every line should be the same and that each line should sustain whatever

disability it has. If in this case it were possible to definitely establish the same through rate by all these ports, if it ever had been possible to do so, the advisability of such an adjustment would deserve serious consideration. It is, however, impossible to apply that rule in fact. The ocean rate from every port is continually fluctuating and is seldom the same for two days in succession. It even varies from hour to hour. The rate may be higher from Baltimore to-day and from New York to-morrow. It cannot, therefore, be determined what inland differential would produce equal rates through all the ports.

It would be impossible to make the same rate through all these ports unless some system like that applied by southern lines to the exportation of cotton were adopted. Under that system there is a published inland rate to the several ports, but that rate is seldom observed. The ocean rate from the various ports is ascertained. To this rate is added the published inland rate from a given point to the various ports and the rate is said to "make" by that port which has the lowest combination. Any carrier is now at liberty to apply this combination through any other port, paying whatever it may find necessary for ocean transportation from that port and retaining the balance of the quoted rate for its own service. In this way, rates are in theory the same via all the ports.

No such system could be applied to this traffic through the ports in question without dire confusion. Under it there can be no such publication of the rate as is required by the Act to Regulate Commerce. There can be no maintenance of a fixed inland rate. The traffic must in all cases be moved upon a through bill of lading and the destination must be known when the rate is quoted and the traffic billed. In actual practice grain moves to the seaboard for export before it has been sold abroad, and it was stated upon this hearing that the same was true of flour. There is no suggestion that such a system could or would be adopted, and without it an equal through rate is impossible until ocean rates are named and maintained in the same way that inland rail rates are.

While, however, it would be impossible to secure by the application of any inland differential the same rate through all the

ports it would be possible to say with confidence that if this were the proper basis of making the differential the present differentials are too high, for they undoubtedly exceed the difference in ocean rates. In our opinion they always have from the very first. While the Thurman Commission reported that rates from Philadelphia and Baltimore were higher than from New York by an amount substantially equaling the differentials, Mr. Fink, a much closer observer, with much better means of information, stated in his report of 1881 that the difference in ocean rates was only about one-half the differential from Philadelphia, and something more than one cent less than the differential from Baltimore. This Commission found upon the former hearing that the difference in ocean rates did not equal the differentials. We have now expressed the belief in our findings of fact that for the last seven years the difference in ocean rates has been materially less than the differentials. During all this time the inland differential has been in effect and for the last two or three years it has been strictly observed. It must follow, therefore, that the rate through Baltimore and Philadelphia has been distinctly lower than the rate through New York.

During all this time the ocean rate has been the result for the most part of free competition. Ships from Baltimore have obtained the highest rate possible. If inland differentials were made the same now to all these ports what must happen? Clearly the ocean rate must be lower from Baltimore and Philadelphia than from New York, for the through rate must be lower. There is no reason to suppose that an equal rate would take traffic in the future which has only moved on a lower rate in the past. The real question is, therefore, whether ships would continue to come to Baltimore and Philadelphia if they were obliged to accept lower rates from those ports than obtained from New York.

It is not to be supposed that every ship would leave Baltimore and Philadelphia at once, nor that every ship would ever forsake those ports. But vessels are not like railways; they can be taken to the best market. It fairly appears that in order to attract shipping, the ocean rate must be somewhat higher from Baltimore and Philadelphia than from Boston and New York. The reasons for this have been stated in our findings of fact and need not be repeated.

It has been said that equal rates through all the ports have never prevailed. To this the operation of the minimum freight agreement affords a brief exception. From January 1, 1902, until May 26, of the same year, rates from all the ports to Great Britain were the same, so that the through rate was lower via Baltimore and Philadelphia by the full amount of the differential. On May 26, ocean rates from these ports were advanced by the amount of the differentials, thus making the through rate from the interior point to the foreign port the same, and this continued in effect for a few weeks. At the expiration of that time a readjustment of ocean rates was made so that the through rates via Baltimore and Philadelphia were lower than through the ports of New York and Boston by about one-half the differential, differing somewhat with different commodities. So far as this experience proves anything, it seems to show that while rates were lower through Baltimore and Philadelphia by the full amount of the differentials, traffic was unduly diverted from Boston and New York and that when the through rate was made the same via all the ports there was an undue diversion to New York.

In view of the fact that Baltimore and Philadelphia have natural advantages in location, that Boston and New York have certain natural advantages in the way of ocean facilities, that it is impossible to make and maintain the same rate through all the ports, we think the true inquiry in adjusting this differential is, what will equalize the advantages of transportation through these various ports. What part of the advantage which Baltimore and Philadelphia enjoy on the score of the inland haul shall they be allowed to retain to compensate them for their disadvantage in the water haul?

The most important factor in determining the route is undoubtedly the rate. It was said in testimony upon the former investigation and has been repeated in this that a difference of from one-fourth to one-eighth of a cent a bushel will determine the port by which grain shall be exported. Other traffic is not equally sensitive, but it must follow with respect to this low grade freight that the through rate by all lines should be substantially the same. There are, however, other considerations.

The item of insurance, quicker and more reliable service, more frequent sailings, the ability to reach a greater number of ports, superior banking facilities and better storage facilities all influence the movement of this traffic and in all these respects New York is superior to its competitors. The elements which enter into the problem are so various and so complex that it is manifestly impossible by any *a priori* process of reasoning to determine what inland differential will equalize all these advantages and disadvantages. This was the conclusion of Mr. Fink, of the Advisory Commission, and of this Commission upon the former investigation. It is our conclusion now. The best that can be done is to examine the effect of these differentials. They have been in operation for almost thirty years. They have not been during a large portion of that time strictly observed, during some portions of it probably not much observed; but there has been running through the whole period what amounts to an average observance, and for the last two or three years they have been well maintained. What does the result fairly show? Does this competitive traffic move through these ports freely or do these differentials give to Baltimore and Philadelphia a distinct and unfair advantage over New York and Boston?

In the examination of the statistics showing this movement, certain things should be kept in mind.

The total amount exported through these ports must decrease as compared with the total exports of the whole country. A glance at the map of the United States will show that the points at which these exports originate are much nearer the Gulf than the Atlantic ports. In the early days of this business the South was prostrate from the effects of the Civil War. It had no railroads worth the name. Today many lines of railway connect the grain fields and packing houses of the West with Galveston and New Orleans and the gradients and cost of operation upon those lines are such that traffic can be transported almost as cheaply per mile as to the Atlantic seaboard. These railroads are bound to carry a large part of this traffic to the Gulf. An examination of Table No. 3 shows the extent to which our grain and flour exports are being diverted from the Atlantic seaboard to the Gulf ports. Again within a comparatively few years

Norfolk and Newport News have become important ports of export. Strong lines of railway have reached deep water at these points, have provided extensive facilities for the handling of this business, and will certainly insist upon a portion of it.

The history of the Erie Canal has an important bearing upon this question. In the early days of the export grain movement the Great Lakes and the Erie Canal formed the cheapest avenue of transportation to the seaboard. At one time more than half the grain which reached the city of New York came by canal. It was that which gave New York its prominence as a grain exporting port. Today the canal has almost ceased to be a factor in this situation and the effect of this upon the exports of that port must not be overlooked. As we suggested in the former case, New York has no vested right to the handling of this grain. The railroads which serve New York can no more claim to carry the grain which formerly went by canal than those leading to Philadelphia and Baltimore. With the dropping out of the canal there disappeared a factor which made powerfully for the port of New York. When the improvements to the Erie Canal which are contemplated are completed so that that water-way becomes once more an actual carrier of traffic, the effect will undoubtedly be to greatly increase the exports of grain and flour from that port in comparison with the other three ports involved in this hearing.

No comparison by single years is of much value. The causes which operate to induce a considerable movement of grain through one port and not through another are so various that no inference can be safely drawn from the history of a single season. The failure of a crop in a particular locality; the presence of large quantities of other freight at a particular port may have this effect. The last year upon which we had the statistics on the former hearing was 1896. New York stood aghast at the falling off in its exports of grain for that season. The differential continued the same through 1897 and 1898, and yet we find that the percentage of New York had returned by the latter year to substantially its normal figure. Counsel for New York stated that the effect of the ex-lake differential was especially noticeable and yet it will be seen upon referring to Table No. 9 that in

1897 when the differential of one cent a bushel established by the Joint Traffic Association was in effect, Philadelphia obtained but 11 per cent of the ex-lake grain, being the smallest with the exception of 1895 for the twelve years given in that Table.

An examination of these statistics seems to show that, beginning with the year 1878, the first full year after these differentials had been established by the agreement of 1877, and coming down to the year 1894, New York has sensibly declined in comparison with the four ports considered as a whole, and that each of the other three ports has somewhat increased in comparison with New York. Boston at first gained, but for the last eight years has lost; Philadelphia at first lost and latterly has gained; Baltimore has fluctuated at different times, but on the whole is a substantial gainer. The decline of New York is, however, largely associated with the falling off in its canal traffic; thus, in the year 1878 the total number of bushels of wheat, corn, and flour, in bushels, exported through New York, Boston, Philadelphia, Baltimore, Norfolk, and Newport News, was, according to a table quoted in the brief of New York, 175,000,000, in round numbers. Of this New York exported 54.1 per cent; Boston, 6.8 per cent; Philadelphia, 16.7 per cent; Baltimore, 22.3 per cent; Norfolk and Newport News, nothing. In the year 1903 the exports through the same ports were 135,000,000 bushels; of which New York had 37.5 per cent; Boston, 9.6 per cent; Philadelphia, 17.4 per cent; Baltimore, 28.1 per cent; Norfolk, 1.1 per cent; and Newport News, 6.3 per cent. In 1878 the canal brought to New York 64,000,000 bushels, while in 1903 it brought only 13,000,000 bushels. New York is still well in advance of any other one port. In the year 1903 it exported 44.4 per cent of the grain, 38.2 per cent of the flour, and 62.7 per cent of the provisions passing out through the four ports. It should be remembered that the effect of these differentials is confined to low-grade traffic; practically all of the higher classes of freight still move out through New York. It was said with truth upon the argument that the value of the exports and imports passing through a particular port has little weight as showing the amount of the traffic; yet it is somewhat significant that of all exports passing out through these four

ports in 1893, New York exported in value 67 per cent, and that of the imports flowing in through these four ports New York had in value, that same year, 78 per cent; of the whole United States, 60.3 per cent. It can hardly be said that there is any such marked diversion of traffic from the port of New York as would warrant the interference of Government to prevent it.

While holding in the former case that there was no such arbitrary interference with the movement of this traffic upon the part of the carriers as would constitute a violation of the Act to Regulate Commerce, the Commission did feel that the differentials upon grain were probably too large. This mainly arose from the fact that from various causes set forth in that report a differential of three cents was much more potential in sending traffic through the port of Baltimore in 1897 than it had been in 1877 or in 1882. Had we been acting in that case in the capacity of an Advisory Commission, we should probably have recommended the reduction of those differentials. They were in fact reduced one-half by the voluntary action of the carriers in 1899, and we are satisfied that the differentials of one cent and one and one-half cents, which were then established and which are still in effect, are sufficiently large. We feel now that perhaps the differentials on flour should be somewhat modified. That commodity moves to the seaboard under substantially the same conditions and at practically the same cost as grain; but is probably somewhat less influenced by the ocean rate than grain. About the only thing which is made reasonably certain by the statistical tables offered in evidence is that Boston has distinctly lost and that Baltimore and especially Philadelphia have distinctly gained in exports of flour. We are inclined to think that this differential should be made two cents at Baltimore and one cent at Philadelphia. We have no knowledge whatever as to the movement of iron and steel articles, in case of which these differentials were reduced in 1904, and can, therefore, express no opinion as to their propriety.

Boston insists that if Philadelphia and Baltimore are entitled to a differential against New York it is, for the same reasons, entitled to some consideration. We found on the former hear-

ing that ocean rates from Boston had been lower than from New York, and since the inland rate has always been the same, this must indicate that the total through rate by the port of Boston, as well as by Baltimore and Philadelphia, must be lower than through New York. It appears from the evidence in this case that at the present time ocean rates are substantially the same from both these ports. It is, therefore, possible that in the future it may become evident that Boston cannot fairly compete for this traffic upon the present basis; but we do not feel that the record before us would justify that inference today. We desire to call especial attention to the fact that these differentials have not been fully observed for a sufficient length of time to indicate exactly what their effect may be when strictly maintained through a series of years.

The immediate cause of this investigation was the controversy over the differential on ex-lake grain. That question was incidentally referred to in the former case, but not much considered. It was there said that this grain originated at the same point, whether it reached the port of export by the all-rail or the lake-and-rail route, and that since the purpose of the differential was to distribute the traffic between the different ports, the same reason which justified a differential in one case would apply in the other. It would follow from this reasoning, that the differential in both cases ought to be the same.

Further reflection leads to the conclusion that the position taken in that opinion is not altogether tenable. The origin of the grain is the same in both cases and the traffic is therefore strictly competitive. It should not be regarded as originating at Buffalo since it is only there temporarily in transit; but there is another feature of the case which deserves attention.

Distance is important as already observed only in so far as it affords a measure of the cost of transportation. One point may be nearer another in miles, but more distant in cost of carriage. Now, the cheapest route by which this grain can reach the seaboard from its point of origin in many cases is by rail to Chicago, by water from Chicago to Buffalo and by rail from Buffalo to the port of export; and this is so if we entirely disregard the Erie Canal. It is a natural advantage of the port of New York

to be located on this route. By this route the distance to New York, in cost of transportation, is no greater than to Philadelphia and Baltimore. When this grain arrives at Buffalo there is, therefore, no reason growing out of the greater proximity of Baltimore or Philadelphia to the grain fields which justifies or requires a lower rate to those ports. It has been seen, however, that the purpose of the differential is to distribute this competitive traffic between the different ports. It has also been seen that the ocean rate through Baltimore and Philadelphia is somewhat higher, except on cargo business, of which none is now done, than through the ports of New York and Boston. If this grain reaches the seaboard by the all-rail route, the advantage of Baltimore is taken away in favor of New York and Boston to the extent of one and one-half cents per hundred pounds, and we think that when the same grain arrives at Buffalo it is proper for the same reason to take away something from the ocean advantage of New York in favor of Baltimore.

This ex-lake grain may move through either Fairport, Erie, or Buffalo. Fairport and Erie are in differential territory, so that rates from these two points would be, upon the ordinary basis, lower to Philadelphia and Baltimore than to New York. But it was said in testimony that with respect to this ex-lake grain these three lake ports should be treated alike; and such is our opinion. To apply a lower rate to Fairport and Erie would be unjust to Buffalo. There is now in effect, pending the disposition of this matter by the Commission, a differential on this traffic of four-tenths of one cent per bushel in favor of Baltimore. We are inclined to think that this should be modified a little and as modified extended to Philadelphia, and we believe that if this is done the differential so enjoyed by those two ports upon this traffic will certainly not exceed the average for the last fifteen years.

It may be asked with some reason why a distinction should be made in the amount of this differential between this ex-lake traffic and that which reaches these ports by the all-rail routes. Our answer is: These four cities are all seaports. This is a fundamental advantage of location which entitles each and every one of them to participate in this export business and the public

interest requires that this right shall be recognized. But each has certain subsidiary advantages peculiar to itself which should be preserved in so far as is compatible with free competition. It may well be, therefore, that Baltimore should be given a somewhat more favorable rate on all-rail than on rail-and-water traffic, for it possesses an advantage in the former case which it has not in the latter.

New York insists that the effect of these differentials is to force traffic out of natural channels into unnatural and more expensive routes, and that the final effect is to impose an enormous burden upon the public. With respect to all-rail traffic this premise of fact is not well taken. The actual cost of delivering grain into the hold of the ship from the average point of origin is probably three cents per hundred pounds less at Baltimore than at New York. The cost of the ocean transportation from Baltimore may be somewhat greater although New York and Boston have strenuously affirmed the contrary. Hence traffic which passes through New York and Boston under the operation of these differentials is forced into a more expensive route than as though it passed out through Baltimore.

With respect to this ex-lake grain, the assumption of New York may be correct, but we do not think this consideration should be controlling. To decree that traffic should always move by the cheapest route would be to entirely eliminate competition, which, within reasonable bounds, is for the interest of the general public.

It was also strongly urged upon the Commission by the representatives of New York and Boston that the desire of the lines serving those ports was to eliminate the present differentials by a reduction in the export rate to those ports, and it was said that this must, in the nature of things be a permanent reduction and that, therefore, it would result in a substantial saving to the public.

It seems probable that if the differentials were to be wiped out at the present time this would be done by applying at Boston, New York, and Philadelphia, upon export traffic, the domestic rate to Baltimore. It is also true that this export rate could not be advanced without advancing the Baltimore domestic rate,

since it would be impossible to maintain at that port a higher rate on export than on domestic business. But what possible guaranty is there that the domestic rate at Baltimore would not be advanced? In 1902 domestic rates to all these ports were raised, and although this Commission found that the advance was unjustifiable it has been kept in effect except during the season of lake navigation. The present export rate is four cents lower than the domestic rate at New York. If that domestic rate is too high it ought to be reduced, but we do not think it would be just to the communities affected nor to the lines serving those communities, nor that in the end it would benefit the general public to deprive the ports of Philadelphia and Baltimore of the ability to compete for this traffic.

We have not considered westbound differentials applicable to import traffic since there are no facts in this record upon which to base an opinion. With respect to export differentials we conclude: that the differential on flour both all-rail and lake-and-rail should be 2 cents per hundred pounds at Baltimore and 1 cent per hundred pounds at Philadelphia; that there should be allowed both Baltimore and Philadelphia a differential of 3/10 of 1 cent per bushel on ex-lake grain; that otherwise the present differentials should remain in force. This is not a proceeding in which the Commission could make an order, nor do we intend to intimate that the facts appearing would justify an order in any proceeding. Our impression is that the above modifications would be fair to the various communities and lines of railway interested, and that it is in the public interest that these differentials should be so adjusted that all the ports and the various lines serving them may fairly compete for this traffic.⁵

In 1912 the Chamber of Commerce of the state of New York, in the interests of the city of New York, brought complaint before the Commission alleging that the port differentials at Baltimore, Philadelphia, Boston, and the Virginia ports were discriminatory against New York,

⁵ 11 I. C. C. Rep., 60-77.

and that the New York rates were unreasonable. This complaint involved not only the differentials on export grain and grain products but also on classes and commodities both for domestic and foreign commerce. Both the eastbound and the westbound differentials were attacked. The class differentials for Baltimore, Philadelphia, and the Virginia Cities that were in effect when the decision was rendered in 1905 were approved. The same differentials on grain that were approved in 1905 were maintained at Baltimore and Philadelphia. The differentials under New York from Lake Erie ports on ex-lake grain for export, except barley and oats, were retained at the same fraction of three-tenths of 1 cent per bushel. The differentials on ex-lake oats and barley for export were reduced to two-tenths of 1 cent per bushel. The rates on exports and imports through Boston were placed on the same basis as at New York. The effect of this decision was to make no changes in differentials at Philadelphia and Baltimore, except to reduce the ex-lake oat-and-barley differentials from three-tenths of 1 cent to two-tenths of 1 cent, and to prescribe the same export and import rates at Boston as those current on the same at New York.

The differential basis, the points at issue, the commercial statistics, and the opinions of the Commission are so clearly set forth and are so important that almost the entire decision, which was written by Commissioner Clark, is quoted below:

The complaint alleges that defendants maintain rates, charges, differentials, rules, and regulations to and from the city and port of New York, which are unjust and unreasonable in themselves, and relatively so as compared with competitive ports, more particularly Philadelphia, Baltimore, Newport News, Nor-

folk, and Boston. As presented on hearing, brief, and argument, the issue is the inland charges on import and export traffic having destination or origin in so-called "differential territory." That territory is bounded on the north by the great lakes and a line drawn west from Chicago, Ill., to Dubuque, Iowa; on the east by a line drawn from Pittsburgh, Pa., to Buffalo, N. Y.; on the south by the Ohio River, and on the west by the Mississippi River.

Complainants allege that higher rates to and from New York on this traffic than are contemporaneously charged to and from Boston, Philadelphia, and Baltimore, are unjustly discriminatory against New York, and unduly preferential to Boston, Philadelphia, and Baltimore.

Norfolk and Newport News, Va., were named in the complaint, but practically no attention was paid to them in the trial.

The Maritime Association of the port of New York, the city of New York by its corporation counsel, and the state of New York by its attorney general, intervened in support of the complaint.

The Boston Chamber of Commerce, the directors of the port of Boston, and the commonwealth of Massachusetts through its attorney general intervened asking affirmative relief, and that the rates to and from Boston be made no higher than to and from Baltimore.

The Baltimore Chamber of Commerce, the Board of Trade of the city of Baltimore, the mayor and city council of Baltimore through the city solicitor, the state of Maryland by its attorney general, the Philadelphia Board of Trade, the Philadelphia Chamber of Commerce, the Commercial Exchange of Philadelphia, the Philadelphia Maritime Exchange, and the city of Philadelphia by its mayor intervened in opposition to the complaint and in favor of maintenance of the former relative adjustment.

The burden of the defense has been borne by the Pennsylvania Railroad and its allied lines and by the Baltimore & Ohio Railroad, these defendants asserting the propriety and the right of maintaining lower rates to and from Philadelphia and Baltimore than to and from New York. The Erie Railroad, with a through line from Chicago to New York, filed no answer to the complaint.

The other New York roads filed general denials. The Boston & Maine and the Boston & Albany Railroads joined with Boston in asserting the interests of the port of Boston and their right as carriers to make such rates to and from Boston as the interests of that port and the carriers serving it demand.

The Baltimore & Ohio and the Pennsylvania base their defense principally upon the fact that the rail haul to or from Baltimore or Philadelphia is shorter than to or from New York, and that therefore lower rates to and from Philadelphia or Baltimore than to and from New York are fully justified.

The issue is a long-standing controversy which originated in and has been kept alive by the competition of railroads serving the several ports and by the commercial interests at those ports. It is conceded by one of the principal witnesses for defendants that the so-called differential port adjustment is more or less arbitrary in its nature and is the result of compromise and arbitration resorted to to settle or avert rate wars.

The rates in question are (a) via all rail; (b) via lake and rail; and (c) ex-lake—that is, from the lake ports to the Atlantic ports. All rates stated herein, unless otherwise specified, are in cents per 100 pounds. Our docket No. 3780, *In the Matter of Import Rates*, was heard and decided in connection with the instant case.

The history of the all-rail differentials on export traffic was recited in *In the Matter of Differential Freight Rates to and from North Atlantic ports*, 11 I. C. C., 13, and need not be restated here. It is a matter of common knowledge that since that report was written the Baltimore & Ohio, if not the Pennsylvania also, has acquired new lines which substantially strengthen its commanding and strategic position in the middle west.

The present eastbound all-rail class rates, taking Chicago as a representative point, are as follows:

Classes	1	2	3	4	5	6
To New York, domestic and export.....	75	65	50	35	30	25
To Philadelphia, domestic and export....	73	63	48	33	28	23
To Baltimore, domestic and export.....	72	62	47	32	27	22
To Boston, domestic	82	71	55	39	33	27
To Boston, export	75	65	50	35	30	25

The present eastbound lake-and-rail class rates, taking Chicago as a representative point, are as follows:

Classes	1	2	3	4	5	6
To New York, domestic and export.....	63	55	43	30	26	21
To Philadelphia, domestic and export.....	61	53	41	28	24	19
To Baltimore, domestic and export.....	60	52	40	27	23	18
To Boston, domestic	70	61	48	34	29	23
To Boston, export	63	55	43	30	26	21

The present ex-lake rates on grain to the ports, export and domestic, are as follows, in cents per bushel:

	Wheat.	Corn.	Rye.	Barley.	Oats.
<u>From Buffalo, N. Y., to—</u>					
New York—					
Export	5½	4¾	5¼	4¾	3⅓
Domestic	6½	5¼	6	5¼	4
Philadelphia and					
Baltimore—					
Export	5⅔	4⁹⁵/₁₀₀	4⁹⁵/₁₀₀	4⁹⁵/₁₀₀	3½
Domestic	6½	5¼	6	5¼	3¾
Boston—					
Export	5½	4¾	5¼	4¾	3⅓
Domestic	8	7½	7¾	6½	4½
<u>From Erie to—</u>					
New York—					
Export	5½	4¾	5¼	4¾	3⅓
Domestic	6½	5¼	6	5¼	4
Philadelphia—					
Export	5⅔	4⁹⁵/₁₀₀	4⁹⁵/₁₀₀	4⁹⁵/₁₀₀	3½
Domestic	6½	5¼	6	5¼	3¾
Baltimore—					
Export	5⅔	4⁹⁵/₁₀₀	4⁹⁵/₁₀₀	4⁹⁵/₁₀₀	3½
Domestic	6	4¾	5½	4¾	3½
<u>From West Fairport to—</u>					
Baltimore—					
Export	5²⁰/₁₀₀	4⁹⁵/₁₀₀	4⁹⁵/₁₀₀	4⁹⁵/₁₀₀	3½
Domestic	6	4¾	5½	4¾	3½
Philadelphia—					
Export and domestic	6½	5¼	6	5¼	3¾

The westbound all-rail class rates to Chicago from the several ports are as follows:

Classes	1	2	3	4	5	6
New York, domestic and import.....	75	65	50	35	30	25
Philadelphia, domestic	69	59	48	33	28	23
Philadelphia, import	67	57	47	32	27	22
Baltimore, domestic and import.....	67	57	47	32	27	22
Boston, domestic	75	65	50	35	30	25
Boston, import	67	57	47	32	27	22

The westbound lake-and-rail class rates to Chicago from the several ports are as follows:

Classes	1	2	3	4	5	6
New York, domestic and import.....	62	54	41	30	25	21
Philadelphia, domestic and import.....	56	48	39	28	23	19
Baltimore, domestic and import.....	54	46	38	27	22	18
Boston, domestic	62	54	41	30	25	21
Boston, import	57	50	38	27	23	20

The import rates from Boston, Philadelphia, and Baltimore are the same under a temporary arbitration decision, the final determination of which is announced in *In the Matter of Import Rates*, 24 I. C. C., 78.

While little has been said as to Newport News and Norfolk, it is proper to say that they constitute in reality one port, served from the west principally by the Chesapeake & Ohio and Norfolk & Western railways. It does not here appear that they are included in the differential agreement; but it is the established policy of the roads serving those ports to maintain there the same rates that are contemporaneously maintained at Baltimore. It is also appropriate to say that the carriers between the differential territory and the Gulf ports compete with the carriers to the Atlantic ports for import and export traffic and that it is their established policy to maintain rates to and from the Gulf ports which bear a definite relationship to the rates to and from the Atlantic ports and which take into consideration the more expensive ocean service to and from the Gulf ports.

The import and export traffic through the port of Montreal has increased largely in recent years, more especially with regard to the export of grain and grain products.

The ex-lake differentials are of prime importance in the movement of grain which is concentrated at the ports on Lake Superior and Lake Michigan and carried thence by water to Buffalo, Erie,

Fairport, and other eastern lake ports, from whence it moves to the Atlantic ports by rail on rates that are wholly independent of the lake charges.

About 1891 the railroads began to compete with the Erie Canal for this traffic, and in 1893 the question of differentials on ex-lake shipments arose. Certain of the New York lines entered into a joint agreement to make certain rates on this traffic regardless of canal competition, and a separate agreement was made which accorded differentials of one-half cent and three-quarters of a cent per bushel to Philadelphia and Baltimore, respectively, on shipments from Buffalo. In 1894 these differentials were reduced to one-half cent per bushel to both Philadelphia and Baltimore. In 1895 the railroad agreements were overthrown and the railroads entered into spirited competition with the canal. From time to time rate wars occurred which were temporarily composed by agreements and arbitrations. Every effort made to maintain equal ex-lake rates to the several Atlantic ports failed.

In the *North Atlantic Ports case, supra*, the Commission found that Philadelphia and Baltimore should be accorded a differential of three-tenths of a cent per bushel on ex-lake grain, which opinion was shortly thereafter modified by making the differential on ex-lake oats and barley one-sixth of a cent per bushel.

Complainants allege violation of section 1 of the Act in that the rates to and from New York are unjust and unreasonable. They say that the lower grades on the New York Central lines make the transportation cheaper than to Philadelphia or Baltimore via the lines which cross the Alleghenies, and from this they argue that the rates to and from New York are unreasonable *per se*. This is answered by defendants in a general way by saying that any difference in cost of transportation due to the grades is fully or more than offset by the difference in cost of fuel which lies in abundance along their rights of way. No evidence has been presented which in any wise lays a foundation for a finding that any particular rate is unreasonable *per se*.

Violation of section 2 of the Act is alleged in that section prohibits charging one person more or less than another person for

the transportation of a like kind of traffic under substantially similar circumstances and conditions. We shall later consider whether or not the transportation is under substantially similar circumstances and conditions.

Violation of section 3 of the Act is alleged in that the differential adjustment gives an undue preference to Boston, Philadelphia, and Baltimore and subjects New York to unreasonable prejudice or disadvantage. This will be referred to later.

Violation of section 4 of the Act is alleged, but as has been seen the rates at issue are those applicable on export and import traffic, and, while the record is not clear and specific on that point, it is not our understanding that this traffic is hauled to or from Baltimore or Philadelphia via any line as to which New York is directly intermediate. Some of it may move through New York to or from Boston, but the amount so hauled must be small.

The rates to and from differential territory are established in zones substantially on distance. It frequently occurs that a circuitous route hauls traffic through a zone which takes higher rates than that in which the point of origin or destination is located. This, however, applies to shipments to and from New York as well as to and from the other ports. This situation is protected by applications for relief from the provisions of the fourth section and is not here passed upon.

Complainants contend that in exercising the power vested in the Commission to prescribe just and reasonable and nondiscriminatory rates it must be controlled by the constitutional provision that in the regulation of commerce no preference shall be given to the ports of one State over those of another. They argue that New York has numerous advantages of location, harbor facilities, steamship sailings, market, etc., the benefit of which is in some degree taken from it by the differential rates, and that the maintenance of lower rates to the other ports is unlawful under the Act to Regulate Commerce and in violation of the constitution of the United States.

If one railroad may not make lower rates to a given port than another railroad makes to another port in another state without violating the constitution of the United States it would seem

necessarily to follow that railroad rates must be the same from a given point to every port in every state, regardless of distance, extent and termini of carriers' lines, cost or value of the service, and of the discriminations which would be thereby created. One city or state prescribes certain harbor dues and charges, while another city or state elects to furnish harbor facilities free. All such considerations determine in some measure the attractiveness of the port to shipping and yet so far as we know it has never been held that the exercise of those rights by municipalities or states is unconstitutional.

Complainants aver that any excess in the rates on export and import traffic to and from the differential territory over that charged from and to Baltimore, Philadelphia, or Boston is imposed for the purpose of diverting traffic from New York to these other ports; or, in other words, for the purpose of making a fair division of the traffic as between the railroads and the ports and constitutes an unlawful additional charge for the sole purpose of discriminating against New York. The record in the *North Atlantic Ports case, supra*, is stipulated into this record, and it there appears that former officers of some of the New York roads testified that they would be glad to transport this traffic to and from New York at as low rates as were contemporaneously applied to and from Baltimore if they could do so. This meant that they would be glad to put New York on a parity with Baltimore if the roads serving Baltimore would maintain as high rates to Baltimore as were thus established at New York. The New York commercial interests contend that the New York rates should be reduced to the Baltimore basis and that the New York roads are willing and anxious to so reduce them. The testimony above referred to was given several years ago. No present responsible officers of the New York roads so testify, and in the light of present-day conditions, as shown in *In re Investigation of Advances in Rates*, 20 I. C. C., 243, we can not say that we have here any clear expression of such desire.

As has been seen, the differentials are the result of compromise, arbitration, and agreement, resorted to as the only means so far found of averting rate wars. The railroads serving Boston have insisted at all times that the export and import rates to

and from Boston should not exceed those to and from New York. The railroads serving Philadelphia and Baltimore have always insisted that the rates on this traffic from and to those ports should be lower than those contemporaneously maintained from and to New York.

The roads serving Baltimore and Philadelphia, as well as the commercial interests of those cities, aver that the differentials might lawfully and reasonably be, and in fact ought to be, wider than they are, and that to maintain them at as low figures as now obtain has the effect of giving New York an advantage to which it is not entitled on any ground except the adoption of this means of averting rate wars.

The Baltimore & Ohio Railroad denies that it should or may be required to sacrifice its legitimate revenues by furnishing a service to and from New York at the same rates it receives for its service to and from Baltimore. It shows that its lighterage and other terminal services in New York cost it substantially more than the present allowance it receives for that service out of the joint rates. On this account it shows a deficit for the years 1909-10-11 of more than \$1,250,000.

This defendant suggests that before the railroads were subject to regulation the control of a large volume of traffic was a potent influence in securing low rates from railroads; that New York being the largest and strongest port, served by strong railroad lines, this wholesale principle worked steadily in New York's favor, and the rates to and from New York became more and more favorable as compared with other and less influential ports, which gave New York an advantage which it still holds; that, recognizing the long-established status and the business interests that had adjusted themselves thereto, the differentials were substituted for the differences in rates that might otherwise have been established, as some recognition of the substantial rights of the other ports. It replies to New York's allegations that the differentials penalized New York for her advantages by saying that the arbitrary differentials are merely substitutes for the more substantial and logical differences in favor of Philadelphia and Baltimore which would naturally exist, and that they are established not for the purpose of diverting traffic from New York

but as a limitation upon the arrangement which New York had secured for diverting traffic from Baltimore and Philadelphia, and in an effort to prevent New York from acquiring all.

The Boston interests assert that the Boston railroads are entitled by law and that it is their duty to meet the lowest export and import rates offered via any of the ports here considered, and in this position the Boston & Maine Railroad concurs. Boston asks, therefore, an order or an expression of opinion from the Commission to the effect that the inland rates on import and export traffic from and to the ports of Boston, Philadelphia, and Baltimore should be the same, and that they should be lower than like rates to and from New York to the extent of the present differentials at Baltimore. They state that it is conclusively shown that Boston can not live commercially without equal inland export and import rates with Baltimore. They ask "the boon of free competition" in order that Boston may secure an equitable share of the export and import traffic. It is somewhat difficult to see how the fixing of arbitrary and artificial differentials can be tantamount to "the boon of free competition."

They call attention to the long list of natural and acquired advantages existing at the port of New York, and from it argue that if Boston is deprived of its advantage of lower ocean and through rates it can not compete on even terms with New York any more than can Philadelphia or Baltimore. The advantages referred to are, a natural port, unlimited capacity for future development, the Erie Canal, fast and frequent steamship service, option market, guarantee of quality of export flour, banking facilities, credit market, ocean rates, and numerous established commercial and trade connections with foreign countries. Not doubting that New York has all of these advantages we inquire, Which of them has not come as a gift of Nature or as a result of judicious investment or commercial enterprise? And which if any of them may, as a matter of law, be taken from New York or nullified by arbitrary rail rate adjustments that are not founded in reasonableness measured by the recognized standards, and the absence of unjust discrimination?

It is urged that the cost of delivering export traffic to and taking import traffic from the steamships at New York, which

is borne by the railroads, is materially greater than at Boston, and that therefore the rates to and from Boston should be less than to and from New York. This suggestion seems to ignore the probable fact that the cost of the additional haul to and from Boston would perhaps offset and perhaps exceed the additional terminal cost at New York.

It is said that Baltimore and Philadelphia have a tremendous advantage over Boston in the exportation of grain raised in the states nearby to Baltimore and Philadelphia. Is this an advantage of which Philadelphia or Baltimore may lawfully or justly be deprived by rate adjustments?

It is urged that the all-rail differentials applying at Baltimore and Philadelphia, which are greater than the ex-lake differentials, give Philadelphia and Baltimore a practical monopoly of the all-rail export grain as against Boston. It is to be noted, however, that substantially all of the all-rail export grain reaching Philadelphia and Baltimore is transported from points of origin or from primary markets over the Pennsylvania and Baltimore & Ohio systems, neither of which reaches Boston.

Boston suggests that New York had little to say as to diversion of export traffic from New York to Boston "for the very good reason that the inland export rates are the same to the two ports," and that on equal export rates, inland and ocean, New York "is cutting the ground from under Boston." It is difficult to see how any unjust discrimination against Boston can be found in an adjustment which for a substantially longer rail haul gives it the same rates as New York, and it is equally difficult to see upon what basis we would find that Boston is entitled to lower inland rates on traffic to or from differential territory than is New York.

It is said that under equal inland rates to New York and Boston any change in the relative movement of this traffic caused by change in the ocean rates simply manifests the need of the steamship lines which have lines common to both ports for the particular traffic at the respective ports. Manifestly this is so and it ought to be so, and in a modified degree it is true where differentials exist, for the ocean rates to and from the differential ports are fluctuated in order to accommodate the

needs and wishes of the steamship lines. Each of the ports contends that its traffic is "diverted" to one or more of the other ports, but inasmuch as no fixed proportion of the traffic has been assigned to any port and as the records show that the percentages of traffic moving through the different ports varies from year to year and from period to period, it would seem more accurate to say that the rate adjustments are made for the purpose of attracting traffic to the several ports.

In recent years certain steamship lines have arranged their sailings so that their vessels land at Boston or Philadelphia on the westward voyage and proceed thence to Baltimore to leave part of their cargo and to secure cargo for the eastward voyage. The exportations of grain from Baltimore have greatly increased in recent years. It may be that this is to some extent due to the differential rates, but to some extent it is because of attractive port facilities for the handling of that traffic, and in part it comes from the large quantities of near-by grain which could not under any reasonable rate adjustment find outlet through the other ports.

Boston experiences some difficulty in getting steamers to come there with imports which it needs because the vessels are unable to there secure eastbound lading. But it can not be that in law the duty devolves upon the railroads to so adjust their rates as to equalize those conditions, or that it is within the reasonable and proper exercise of the powers of this Commission to require such adjustments. If certain imports would naturally move to Boston and certain exports would naturally move from Baltimore, why should the railroads or this Commission so adjust the rail rates as to equally divide that tonnage and insure equal steamship sailings to and from those ports?

Of the imports through Boston only 22 per cent are for differential territory. A large portion of the export tonnage through New York moves to foreign ports to which steamship lines have direct sailings from New York and no sailings from the other ports.

As we have seen, Baltimore and Philadelphia export large quantities of grain grown in territory tributary to those ports and the surplus of such crops or the attractiveness of the export

market for them would necessarily affect that movement from year to year. It appears that dissatisfaction of exporters with the inspection at a certain market may and does affect the exports from that port.

Looking at the geography of the principal railroads serving these several ports, we find that the New York Central lines constitute a system which reaches many of the important commercial centers in the differential territory, with termini at New York, Boston, Chicago, and St. Louis. Traffic moving to and from Boston via this system would not move through New York, but would go via Albany and the Boston & Albany line. The Boston & Maine Railroad has lines west and north from Boston and connects with the Canadian Pacific, which has its own line to Detroit; with the Grand Trunk, which has its own line to Chicago and other important centers in differential territory; and with the New York Central and other lines at or near Albany. The Lehigh Valley has a line from Buffalo to New York and reaches Philadelphia in connection with the Philadelphia & Reading. The Delaware, Lackawanna & Western has a line from Buffalo to New York and has connections with the Pennsylvania Railroad to Philadelphia and to Baltimore. The Erie Railroad has a line from Chicago and other important centers in differential territory to Buffalo and to New York. The Pennsylvania Railroad, with its allied lines, has main lines from Chicago, St. Louis, and many other important points in differential territory to Baltimore, Philadelphia, and New York. Its line from the west to New York passes through Philadelphia. It has lines to Buffalo, Erie, and Cleveland, on Lake Erie, and traffic moved by it between those ports and New York goes via Philadelphia. The Baltimore & Ohio system has lines from Chicago, St. Louis, and many other important places in differential territory through Baltimore to Philadelphia. By arrangement with the Philadelphia & Reading and the Central of New Jersey its through route is extended from Philadelphia to New York, at which point the Baltimore & Ohio has and operates its own terminal facilities. This system reaches Toledo, Sandusky, Lorain, Cleveland, and Fairport, on Lake Erie.

Every railroad desires to get the longest possible haul on the

traffic which it transports, and therefore the Boston & Maine, the Grand Trunk, and the Canadian Pacific naturally prefer to see the traffic move through Boston. The New York Central, the Lackawanna, the Lehigh Valley, and the Erie prefer to see it move through New York. Philadelphia is the home city of the Pennsylvania system and it is to its interests to have the traffic move through Philadelphia. Baltimore is the home city of the Baltimore & Ohio system and it is to its interests to see the traffic move through Baltimore. The haul via the Pennsylvania system is substantially the same to Philadelphia and to Baltimore and is some 90 miles greater to New York than to Philadelphia. The haul via the Baltimore & Ohio system is 90 miles farther to Philadelphia than to Baltimore and 186 miles farther to New York than to Baltimore. As stated, these systems assert their right to charge more for the longer haul and the extra service. In addition to this the Baltimore & Ohio shows that its earnings on a shipment to or from Baltimore are greater than on the same shipment to or from New York, due to the fact that on the New York business it must divide the earnings with its connections and must perform a substantially more expensive terminal service.

The traffic being that which moves to and from recognized competitive territory, all of the carriers that are in a position to do so join with their connections in moving such of it as they can secure to any and all of the ports under the so-called differential rates. The carriers whose lines reach the points of origin and destination of this traffic and all of their connections compete for it, and, in so far as the differential adjustment is observed, distance is largely disregarded.

As a matter of fact the differential adjustment is not adhered to. This is evidenced by the facts developed in *Federal Sugar Refining Co. v. B. & O. R. R. Co.*, 17 I. C. C., 40, and by the fact, incidentally brought out in this case and investigated from the records of the carriers by examiners of the Commission, that upon eight cargoes of agricultural implements exported through Baltimore between Jan. 1 and April 1, 1911, the delivering line at Baltimore and its connections paid the agent of the shippers approximately \$35,000 allowance "in lieu of lighterage and

floatage," when in fact no such service was performed as to any of the tonnage making up those cargoes. The allowance was made on the strength of a tariff of the terminal line at Baltimore which applied only at Baltimore and the existence of which was not generally known.

Complainants urge that the present proceeding differs from previous proceedings affecting the same issues in that now the Commission has been vested with rate-making power and must determine the inherent reasonableness of the rates in question.

A mass of statistics have been filed by the parties, each arguing from its statistics the conclusions which it thinks should be reached. Complainants say: "The statistics and the testimony relating to the movement of traffic are all immaterial except as they may have a bearing upon the historical facts relating to the origin and purpose of the differentials." Many of these statistical tables are of value only to that extent, for the reason that they are not confined to and do not assume to differentiate the traffic to which the differential import and export rates apply. There is a heavy movement of import and export traffic through the several ports which has destination or origin at the ports or at points not situated in the differential territory. In making the differential agreement it was apparently conceded that the territory east of the Buffalo-Pittsburgh line was largely non-competitive, and that the import and export traffic having destination and origin therein would and should find its way to the natural or most convenient port. Numerous statistical tables measure the relationship of the ports and the effect of the rate adjustments upon the movement of traffic by showing the value of the imports or exports. Manifestly, such statistics, which include the value of precious stones, metal, bullion, and perhaps money, are of no help in determining the question here presented.

One exhibit shows that of the total movement of import traffic through the four ports, New York secured for the period 1909 to 1911, inclusive, 39.6 per cent, as compared with 31.1 per cent for the period 1906 to 1908, inclusive. The percentages of the other ports for the same periods, respectively, were: Philadelphia 19.1, 20.4; Baltimore 28.1, 34.4; Boston 13.2, 14.1. The total

increase in tonnage was 815,098 tons, of which New York secured 513,868 tons.

Another exhibit shows that of the import traffic in tons to differential territory for 1911, New York secured 58.4 per cent of that which moved under class rates and 28 per cent of that which moved under commodity rates; Philadelphia secured 15.4 per cent under the classes and 24 per cent under the commodity rates; Baltimore 18.1 per cent under classes and 32 per cent under the commodity rates; and Boston 8.1 per cent under the classes and 16 per cent under the commodity rates.

On an exhibit it appears that of the exports of wheat, corn, and oats, New York secured in 1899, 25 per cent; in 1905, 25.8 per cent; in 1911, 24.4 per cent. Its highest percentage was 27.5 in 1907, and its lowest 16.9 in 1910. During the same period Philadelphia had 12.3 per cent in 1899; 8.6 per cent in 1905; 10.8 per cent in 1911. Its highest percentage was 15.7 in 1900, and its lowest 7.5 in 1903. Baltimore had 17.4 per cent in 1899; 13 per cent in 1905; 14.6 per cent in 1911. Its highest percentage was 17.6 in 1901 and its lowest 8.6 in 1909. Boston had 10.2 per cent in 1899; 10.5 per cent in 1905; 11.3 per cent in 1911. Its highest percentage was 12.3 in 1901 and its lowest 7.5 in 1903.

It is thus seen that while the percentages of the several ports have fluctuated widely from year to year the differences between 1899 and 1911 are not striking. Each of the ports has a slightly smaller percentage excepting Boston, which increased 1 per cent.

During the same period the percentages of export flour secured by the several ports are stated to have been as follows: New York, in 1899, 28.4; in 1905, 36.4; in 1911, 36.4. Its highest percentage was 36.4, in 1905 and again in 1911, and its lowest 26.3, in 1901. Philadelphia had 14.1 per cent in 1899, 16 per cent in 1905, 10.7 per cent in 1911. Its highest percentage was 22.2, in 1907, and its lowest 10.7, in 1911. Baltimore had 20.8 per cent in 1899, 15.2 per cent in 1905, 9.9 per cent in 1911. Its highest percentage was 21.8, in 1903, and its lowest 9.3, in 1910. Boston had 10.1 per cent in 1899, 6.2 per cent in 1905, 6.2 per cent in 1911. Its highest percentage was 10.4, in 1900, and its lowest 5.1, in 1903.

On this traffic it appears that New York has made a substan-

tial gain, while the other ports have lost, the greatest loss being experienced by Baltimore.

Another exhibit purporting to show the exports of flour through those ports for the years 1906 to 1911, inclusive, shows that in 1906 New York had 42 per cent and in 1911, 60.4 per cent; that in 1906 Boston had 10 per cent and in 1911, 6.4 per cent; that in 1906 Philadelphia had 27 per cent and in 1911, 16.7 per cent; that Baltimore had 21 per cent in 1906 and 16.5 per cent in 1911.

The differences in the percentages shown in these exhibits emphasize the difficulty of basing any conclusion upon the statistics, even if they were controlling. It was suggested before the hearing was had that the contending parties get together and agree upon a uniform basis and method of preparing the statistics, but that suggestion was not acceptable and each party has prepared its own from such sources and authorities and in such manner as it elected.

Another exhibit shows that of the tonnage of export flour and grain products moving lake-and-rail for the years 1909 and 1910 New York secured 33 per cent, Boston 9 per cent, Philadelphia 28 per cent, and Baltimore 30 per cent.

From this it would appear that this tonnage moved in quite equal volume to the ports of New York, Philadelphia, and Baltimore. Obviously it would require some unusual condition or some strong inducement to attract this business to Boston, especially in view of the fact that the main trunk lines reaching Baltimore and Philadelphia and New York have their own boats on the lakes.

Another exhibit shows the movement in bushels of export Canadian breadstuffs in bond for the period 1904-1909 and 1910-1911. In the first period Boston secured 6,800,000 and in the second period 8,200,000; Philadelphia secured for the two periods respectively 1,900,000 and 5,400,000; Baltimore, 460,000 and 2,020,000; New York, 5,600,000 and 11,400,000.

From this it is argued that Boston secured an increase of 20.5 per cent, while the others secured increases in much larger percentages, but it is seen that although Boston had increased in the second period over the first 20.5 per cent and Baltimore 333

per cent, Boston had for the second period 8,200,000 bushels, as compared with Baltimore's 2,020,000, and that, although Philadelphia had increased 184 per cent, it had for the second period but 5,400,000 bushels.

An exhibit stating the percentage of tonnage of west-bound import freight destined to and beyond the western termini of the trunk lines, which, generally speaking, means Buffalo, Pittsburgh, and beyond, shows that in 1905 Boston had 9 per cent and in 1910, 13.1 per cent; that in 1905 New York had 34 per cent and in 1910, 36.1 per cent; that in 1905 Philadelphia had 16.4 per cent and in 1910, 18.2 per cent; and that in 1905 Baltimore had 31.2 per cent and in 1910, 26.1 per cent.

The original agreement for differentials was based on the fact that the ocean rates for freights to and from foreign markets were less from and to New York than from and to the other ports, and the effort was to equalize the entire through charge via the several ports.

Where there is steamship competition between two or more of our ports and the same foreign destination, the ocean freights are higher to and from Boston, Philadelphia, and Baltimore than to and from New York. It appears that the steamship lines plying from Boston, Philadelphia, and Baltimore absorb or "get" as much of the differential inland rate as possible in their higher ocean rates. But this has the effect of giving these ports ocean service which otherwise they would not have.

It appears that full cargo rates are now the same from all of the ports, but that substantially no full cargo business is done except at Baltimore and Philadelphia. In some instances full cargoes are moved by independent tramp vessels, and in some instances by tramp vessels that have been employed by regular lines to move tonnage which they can not accommodate in their regular boats. Some contend that the ocean rates are known and stable quantities. But that contention is, we think, overcome by a preponderance of testimony in this and other proceedings, and by the fact that one important ocean freight-carrying line in declining to comply with a request for copies of its schedules of rates, stated that they were not tariffs in the sense that they would or could be maintained. The ocean rates fluctuate accord-

ing to the spare room available as the time approaches when the vessel must sail. The lines sailing from Baltimore and Philadelphia know that the inland rates are lower to and from those ports than to and from New York, and that therefore they can get higher ocean rates at the outports. In other words, the differentials to some extent operate as a bonus to the ocean carriers to bring traffic to and seek traffic at the ports where the lower inland rates apply. But it is contended that the ocean haul is longer to and from the out-ports than to and from New York, and that therefore the ships will not serve the out-ports unless they can get somewhat higher rates there. It was testified in the 1905 proceeding and again in this record that it costs less to load boats at Baltimore and Philadelphia than in New York. Some witnesses say that, all things considered, the ocean transportation is less to and from the out-ports than to and from New York. Others, however, contradict this.

Representatives of the contending ports show elaborately their several natural and acquired advantages, the improvements that have been made and that are in contemplation, the number of ocean lines plying to and from the ports, and the number of sailings. The out-ports argue that the differentials are essential to their existence as import and export ports, and that if the differentials are not preserved the only part of this traffic which they can secure will be that which New York is physically unable to handle. New York's representatives say that the state and city have expended large sums of money to improve the harbor and enlarge its facilities and that the arbitrary differentials against New York and in favor of the other ports counteract or largely nullify the benefits which they ought to reap from those efforts and expenditures.

The fact that the United States government has done much to improve these various waterways and harbors is referred to, from which it is only reasonable to infer that it is the policy of the government to have these several ports available and to encourage traffic through them. It is too well established to admit of further argument that neither the railroads nor the Commission may adjust rates in such way as to deprive a place of its natural advantages or give it artificial advantages which

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are withheld from a competitor. If this is true as to natural advantages, it must be doubly true as to advantages acquired through enterprise and investment.

Complainants allege that higher rates are imposed to and from New York to offset New York's advantages. Representatives of Baltimore and Philadelphia say that it is not the maintenance of higher rates at New York, but the maintenance of lower rates at Philadelphia and Baltimore, to which they are entitled by their geographical position. Whether we say that higher rates are maintained at New York or that lower rates are maintained at Baltimore and Philadelphia we reach the same result. The difference between the rates is the same.

Reference is made to an option market in New York as one of its advantages, and the absence of such market at the other ports as one of their disadvantages, which justify the differences in the rates. We do not think that the existence of an option market at one place and the absence of it at another place is a proper consideration in the relative adjustment of rates.

The short line from Buffalo to New York is 398 miles, to Philadelphia 416 miles, and to Baltimore 396 miles. From Buffalo to these three ports there is no substantial difference in distance. The short line from Erie to Baltimore is 424 miles, and to Philadelphia it is 436 miles; from Fairport to Baltimore it is 454 miles, and to Philadelphia 473 miles. Erie is a Lake port served principally by the Pennsylvania system and Fairport is served principally by the Baltimore & Ohio system, and, as has been seen, the traffic via either of these systems from Erie or from Fairport to New York passes through Baltimore or Philadelphia or both.

Complainants ask what can justify the Commission prescribing greater through rates on traffic that moves between Chicago and Buffalo by steamer and between Buffalo and New York by rail than upon the same traffic between Chicago and Philadelphia or Baltimore by lake-and-rail via the other lake ports, aside from supporting the all-rail differentials in the effort to parcel out a division of the traffic between the several ports?

While the rail haul from Erie or Fairport to the Atlantic ports is greater than from Buffalo the lake haul to Erie or Fair-

port is correspondingly less than to Buffalo. This question can not be determined upon the basis of distance alone. If it were, Baltimore would be given more advantage than it now has. The interests of all concerned and the matter of lawful and controlling competition must, as will appear, be considered.

The great bulk of the high-class tonnage moves through the port of New York, and that moving through the other ports is largely the heavier low-grade commodities, such as grain, flour, ores, burlap, coal, etc. It appears both in the previous record and in this that a small difference in the freight charges on grain determine the port or market to which it will go and affect the price of the grain. A New York grain exporter testified that he could not export from New York in competition with Baltimore. When asked by counsel for Baltimore interests why in that case he did not ship from Baltimore, he replied, referring to a rule of the Baltimore Board of Trade which imposes a penalty upon shipments made by others than the members of that board:

Because we can not ship from Baltimore and pay you gentlemen down there a commission for handling our grain.

Apparently the steamship companies prefer to handle the heavy traffic through Baltimore or Philadelphia, and they adjust their rates with that in view. To some degree, at least, the inland differentials contribute to that result. In 1881 Mr. Albert Fink, then commissioner of the trunk lines, stated in a report on this subject:

Whether the differentials are maintained or not free ocean competition acts at least in a great measure as an equalizer of the through rates.

If this is not true, manifestly it ought to be. And if the inland rates are free from artificial adjustment the steamship lines must compete on the ocean.

Witnesses testify that generally ocean rates from foreign ports to Boston, Philadelphia, and Baltimore are lower than to New York, and that the ocean rates from the various ports to a given foreign port are such as, in some instances, make it impossible to move the traffic through New York. It seems that rates from foreign destinations to the out-ports are generally so much per 100 pounds, while to New York they are on a measurement or

space basis, which makes an exact comparison difficult, if not impossible. In many instances the ocean rates from the out-ports are lower than from New York, although in other instances they are higher. One witness testifies "last year as well as this year the steamship lines from the United Kingdom have made the same rates to New York as to the out-ports in most cases." It appears that whenever there is a readjustment of the inland rates the steamship lines take up the shrinkage by adjusting their rates to and from the several ports.

In January, 1902, a number of the ocean carriers entered into a minimum freight agreement not to contract for carriage by steamships under their control any shipments of the commodities named in the agreement from the United States or Canada to ports in Great Britain or Ireland at lower rates of freight than those specified, and that they would not make or allow made any rebate to shippers or consignees. This agreement was made in Liverpool and gave no recognition to the inland freight differentials in the United States. It was to stand for 14 days, at which time any party thereto might withdraw, and such withdrawal would release the others.

In March, 1902, the parties to the agreement resolved that the benefits of the minimum rates should be maintained, but that owing to differentials on inland rates, insurance rates, differences in steamer hauls, etc., it was desirable to elaborate and revise the agreement, and a committee was appointed for that purpose. This committee reported about a month later, and a majority were in favor of adjustment of ocean rates by taking the inland differentials into account.

We pause here to remark that the adjustment of inland differentials to compensate the ocean disabilities, followed by an adjustment of ocean rates which takes into consideration the inland differentials, would constitute an endless chain or be tantamount to moving about in a circle.

In May, 1902, a report of the committee was adopted which fixed certain minimum ocean rates on a number of commodities. The various ports were grouped together under the same rates as follows: New York, Boston, and Portland; Montreal, Quebec, and Philadelphia; Baltimore and Newport News. This schedule

was to stand for a trial period of 3 weeks, and was afterwards extended subject to 14 days' notice of withdrawal. In June, 1902, withdrawal of certain commodities and traffic began, and in an effort to preserve the agreement the committee in July recommended concessions on certain commodities to the ports of Philadelphia and Baltimore which amounted to about one-half of the inland differentials to those ports. Thereupon notice of withdrawal from the agreement was recalled.

In July, 1903, on a request that the steamship lines from Philadelphia, Baltimore, and Newport News advance their rates to equalize through rates with Boston, it was agreed that the minimum ocean rates on flour to Liverpool originating in differential territory should be: From Boston, New York, and Portland, 8.44; from Quebec and Montreal, 10.44; from Philadelphia, Baltimore, and Newport News, 9.44. For September shipments the rates were to be: From New York, 8.44; from Philadelphia, 9.44; from Baltimore, 9.94.

The effort to maintain any permanent agreement among the ocean lines appears to have failed because of the insistence of one of the Baltimore lines upon lower rates from and to Baltimore.

The territory contiguous or local to the several ports would afford each of them control of more or less of the export and import traffic, and in the competitive territory much of the traffic is so controlled by the originating or delivering lines that it would naturally move to such port as they prefer. One importer testified that he had found the service through Baltimore more satisfactory and that even on equal rates he would not use the port of New York. Each port has certain attractions for particular classes of traffic, and it appears that the heavier commodities can be handled more economically and expeditiously at some of the out-ports than at New York. Ocean-going steamers can be loaded with grain directly from the elevators at Baltimore. A great part, if not all, of the traffic has to be lightered at New York.

The Baltimore interests assert that in the former hearing it was shown that Baltimore was the only one of these ports that was on a natural rate adjustment, inasmuch as the domestic rates and the inland rates on export traffic through Baltimore were

the same, while at the other ports the export rates were lower than the domestic rates, and that from this it follows, as appeared in the former hearing, that the export rates to Baltimore can not be advanced without at the same time advancing the domestic rates.

Under the tariffs now in effect the domestic and export all-rail class rates from Chicago are the same, respectively, to New York, Philadelphia, and Baltimore, and the export rates to Boston are lower than the domestic rates. The export rates on grain are lower than on domestic shipments to the several ports as follows: Boston, 5 cents; New York, 3 cents; Philadelphia, 2 cents; Baltimore, 1½ cents.

In the former hearing the Commission found that the cost of delivering grain into the hold of a ship from the average point of origin was approximately 3 cents less at Baltimore than at New York. The differential in favor of Baltimore is 1½ cents.

It is clear that the differential agreement was originally made in an attempt to equalize the total charges on import and export traffic through the several ports, as gateways. We have no jurisdiction of the ocean rates and must deal with this question as though the ports were destinations instead of gateways. This does not mean that the carriers may not take into consideration the previous or further transportation of the traffic on the ocean and thus differentiate it, reasonably, from domestic traffic, but the rates to and from the ports must be reasonable, must be published as independent from the ocean transportation, and are subject to all of the provisions of the act. *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co.*, 13 I. C. C., 266; *Armour Packing Co. v. U. S.*, 209 U. S., 56. It is our duty to see that shippers are accorded reasonable rates and that undue discrimination is not practiced against shippers, commodities, or communities. It is also our duty to consider the interests of all of the shippers and communities affected and to refrain from condemning discriminations which are not unjust. Much weight has always been given to rate adjustments of long standing to which commercial conditions have adjusted themselves, and in this connection it is to be noted that Baltimore and Philadelphia have had lower rates than New York for more than 40 years.

Each railroad was originally constructed to reach certain points and to serve certain territories, and they have expanded by construction, purchase, and lease of other lines as it has seemed to their interests to do. Each of them owes a duty to the entire public and each of them owes a peculiar duty to the persons and communities which it directly serves and which are dependent upon it. In addition to serving the places and territories directly reached by it, each system endeavors to increase its total revenues by securing as much competitive traffic as is possible.

It is urged that Boston is as dependent as is Philadelphia or Baltimore upon the differential territory for its exports and imports, and the Boston interests join in the contention that the railroads should so adjust their rates as to insure movement of a certain or substantial part of the traffic through those ports. Neither the carriers nor the Commission has any right to undertake to so apportion the traffic between rival ports or cities. While recognizing the right of the carriers to conserve the interests of the ports and territories served by them, we can not consider the carriers as one great and single system. *In Re Advances in Coal Rates by the Chesapeake & Ohio Ry. Co.*, 22 I. C. C., 604.

The Baltimore & Ohio and the Pennsylvania systems, reaching by their own lines so many of the important commercial centers in the middle west and so many of the lake ports and having their own boats on the lakes and hauling all of their New York traffic through either Philadelphia or Baltimore or both, control the rate situation between the territory here considered and Baltimore and Philadelphia. The competitive conditions at Baltimore and Philadelphia are created by these systems, and the rate situation to and from those ports is controlled by them. It was this control by these systems that led to the making of the differential agreement. We do not recognize such an agreement as lawful, but the conditions which brought it about are as strong to-day as they ever were and we find now, as we found in the *North Atlantic Ports case, supra*, that the Pennsylvania and the Baltimore & Ohio have the lawful right to maintain lower rates to and from Baltimore and Philadelphia than they contemporaneously maintain to and from New York. They would probably also have the right to

make these rates the same to and from all of those ports if they chose to do so.

The Boston lines have an undoubted right to make such rates to and from Boston as their interests demand, subject only to the limitations that the rates must be reasonable; that they may not carry that traffic at less than the cost of the service and so unduly burden other traffic, and may not unjustly discriminate against other points which they serve or in whose traffic they participate. The New York Central and the Erie, having their own lines from Chicago and Buffalo to New York and no lines to Philadelphia, Baltimore, or Boston, have a right to make their rates to and from New York as they choose, subject to the same limitations. The Lehigh Valley and the Lackawanna directly serve New York, and, through established connections, serve also Philadelphia and Baltimore. They, of course, may not unjustly discriminate against either of these ports.

If the New York lines and other connections of the Baltimore & Ohio and the Pennsylvania systems participate in the haul of traffic to and from Philadelphia or Baltimore, they must do so under the competitive conditions created by the Baltimore & Ohio and the Pennsylvania at Baltimore and Philadelphia which the other lines are unable to control, and under these conditions we do not think it unlawful if they participate in the movement of traffic to and from Philadelphia and Baltimore under competitive rates even though at the same time they maintain higher rates to and from New York. *Railroad Commission of Kansas v. A., T. & S. F. Ry. Co.*, 22 I. C. C., 407; *Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co.*, 23 I. C. C., 195.

As to lake and rail traffic through Buffalo and ex-lake traffic from Buffalo, the distance and the service via the short lines is substantially the same to Baltimore and to New York, but if the New York lines were to withdraw from participation in that traffic to and from Baltimore or Philadelphia, it could and doubtless would move in the same volume via the other lines, and, in any event, that which reaches Buffalo must move there in competition with the other lake ports, such as Erie, Fairport, etc.

The theory of the law is that carriers shall establish and maintain through routes and joint rates so that there may be the

freest movement of traffic without the necessity of reshipment. In the formation of these through routes, however, the law recognizes the right of a carrier to protect its own long haul, and a carrier may not be required against its will to participate in a through route between any two points which does not include all or substantially all of its line or lines between those points, except when an unreasonably long or circuitous route would otherwise be created. The law also recognizes the right of the shipper to dictate the intermediate routing of his shipments over available through routes. We therefore think that it is not unlawful and not unjustly discriminatory against New York for the carriers which serve it to participate in the competitive traffic to Philadelphia and Baltimore at the lower rates fixed at those points by the carriers whose lines control those situations.

As before stated we neither recognize nor consider the differential agreement as lawful. The law contemplates free competition and condemns any combination which restrains such competition. We repeat that defendants Baltimore & Ohio and Pennsylvania systems have a lawful right to maintain lower rates between this differential territory and Baltimore and Philadelphia than they contemporaneously maintain to and from New York. The New York lines and their connections have a right to meet the competition so created at Philadelphia and Baltimore and which is beyond their control, while at the same time maintaining higher rates to and from New York. We think that as to this traffic, it would not be unjustly discriminatory for defendants to maintain the same rates to and from New York and Boston. We are not to be understood as holding that the present rate adjustment will for all time or for any particular period of time be just and reasonable, but we can not find that reasonable differences in rates as between Philadelphia and Baltimore on the one hand and New York on the other hand unjustly discriminate against New York. We find no justification for lower rates to and from Boston than to and from New York.

We are of the opinion:

(a) That differentials under New York on all-rail and lake-and-rail export shipments from differential territory to Baltimore should not exceed 3 cents per 100 pounds, and to Philadel-

phia should not exceed 2 cents per 100 pounds, on the classes and on commodities other than grain. On all-rail and lake-and-rail export shipments of grain the differentials under New York should not exceed 1.5 cents per 100 pounds to Baltimore, and 1 cent per 100 pounds to Philadelphia.

(b) That as to all of this traffic the export rates to Boston should not be lower than to New York.

(c) That the differentials under New York from Buffalo, N. Y., Erie, Pa., and West Fairport, Ohio, to Baltimore and Philadelphia on ex-lake grain from differential territory for export should not exceed 0.2 of a cent per bushel on barley and oats, and 0.3 of a cent per bushel on wheat, corn, and rye.

(d) That differentials under New York on import traffic, all-rail and lake-and-rail, from Philadelphia and Baltimore to differential territory should be no greater than those which existed in the latter part of 1908, to wit, in cents per 100 pounds:

Classes	1	2	3	4	5	6	Commodities
Philadelphia differentials.....	6	6	2	2	2	2	
Baltimore differentials	8	8	3	3	3	3	

And that the import rates from Boston should not be lower than from New York.⁶ . . .

The movement of foreign freight through, and of domestic freight to and from, the North Atlantic ports is of such magnitude, and the problems underlying the port differentials are so fundamental that no exposition of the New York-Chicago Rate System is complete without the facts and principles set forth in the three important decisions of the Commission quoted above. In 1913 the interests of Boston again brought complaints before the Commission, but the decision of 1912 was adhered to. The problem of differentials at the North Atlantic ports is one of the most difficult questions that the Commission has had to adjust. In the past it has been a veritable Banquo's ghost, and it is not unlikely that it may appear again in the future.

CHAPTER VIII

**RATES BETWEEN POINTS IN OFFICIAL CLASSIFICATION
TERRITORY EAST OF THE ILLINOIS-INDIANA
STATE LINE ON THE ONE HAND AND ST.
PAUL AND OTHER TERRITORIES
ON THE OTHER**

1. BETWEEN POINTS EAST OF THE WESTERN TERMINI AND ST. PAUL, MINN., AND POINTS WEST OF LAKE MICHIGAN

In the preceding chapters the various combinations of rail, water, and rail-and-water rates based on the New York-Chicago percentage system have been explained. The rates to and from percentage territory shown on Maps 3 and 4 applicable on local shipments have been set forth. In addition to these local rates moving between percentage territory on the west and points east of the Western Termini, there is also a large movement of freight between points lying west of Lake Michigan, west of the Mississippi and the Missouri rivers, and south of the Ohio and the Potomac rivers, that moves on proportional rates applying within the New York-Chicago territory. A notable example of this is the proportional rate applying east of Chicago, Chicago Junctions, and Lake Michigan on shipments between the Atlantic seaboard on the one hand and points grouped with St. Paul, Minn., on the other.

(a) Westbound

The rates from the Atlantic seaboard territory to St. Paul, Minneapolis, Minnesota Transfer, Duluth, Minn.,

and points taking the same rates are based on the rates from the Atlantic seaboard points to Chicago, plus proportional rates shown in Table 41 applying on the portion of the haul west of Chicago. The proportional rates

TABLE 41

BASIS FOR RATES FROM ATLANTIC SEABOARD POINTS EAST OF THE
WESTERN TERMINI OF TRUNK LINES TO ST. PAUL, MINNE-
APOLIS, MINNESOTA TRANSFER, DULUTH, MINN., SUPERIOR
AND ASHLAND, WIS., AND STATIONS TAKING SAME
RATES AS NAMED IN TARIFFS OF THE
INDIVIDUAL LINES

ITEM	WHEN FROM	TO	PROPORTIONAL RATES AP- PLYING WEST OF CHICAGO ¹					
			In cents per 100 pounds					
			1	2	3	4	5	6
1	All points named in eastern lines' tariffs, except the Syracuse and Rochester group ²	St. Paul, Minneapolis, Minnesota Transfer, and Duluth, Minn. ³	40	34	26	18	16	13
2	Syracuse and Rochester group	St. Paul, Minneapolis, Minnesota Transfer, and Duluth, Minn. ³	42	34	26	18	16	13

¹ Governed by the Official Classification.² The Syracuse group is shown on Map 9 of the Atlas of Railway Traffic Maps.³ And stations taking the same rates as provided in eastern lines' tariffs.

shown in item 1 of Table 41 apply west of Chicago, Chicago Junctions, Kankakee, Bloomington, Peoria, and certain lake ports on shipments from eastern groups east of the Syracuse group. On shipments from groups east of the Syracuse group the proportional rates applying west of Chicago are shown in item 2 of the table. They are

the same as those from other groups except on the first class, in which case the rates are 2 cents higher than the proportion applying over the same part of the route from other eastern groups. It should not be concluded from this, however, that the first-class rate from the Syracuse group to St. Paul is higher than from New York to St. Paul. The rates from the Syracuse group to Chicago are only 70 per cent of the rates from New York to Chicago. The rate on first-class freight is only 53 cents. The first-class rate from Syracuse to St. Paul is therefore 53 cents plus 42 cents, or only 95 cents, which is 20 cents less than the rate from New York to St. Paul.

From points east of the Western Termini shown in the groups of Map 9 to Albert Lea and points grouped therewith, also to points on the Chicago Great Western Railway shown in section 2 of Table 42 the rates are arbitrarities over the rates from the same groups to St. Paul. These arbitrarities are shown in Table 42. The arbitrarities applying to Albert Lea and other points grouped therewith are a 15-cent scale, while those applying at Mankato are a 20-cent scale.

Table 43 shows the rates applying on the part of the haul east of Chicago and other junctions and on the portion west of Chicago, and through rates on shipments from eastern groups of Map 9 to St. Paul, Albert Lea, and Mankato, each of which is taken as representing a group of stations. It may be seen that the rates from New York to St. Paul are a 115-cent scale. The rates from New York to Albert Lea and points taking the same rates are a 130-cent scale, and the rates from New York to the Mankato group are a 135-cent scale. The scales of rates presented in Table 43 are merely illustrative of the rates from the other eastern groups to the three

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groups specified. From Syracuse, Cumberland, and other western groups the rates are less, but they are made up of the rates to Chicago plus the proportional rates shown in Table 41. The rates from all eastern groups shown on Map 9 to St. Paul, Albert Lea, Mankato,

TABLE 42
ARBITRARIES OVER ST. PAUL RATES APPLYING FROM ATLANTIC
SEABOARD TO GROUPS SPECIFIED

To	ARBITRARIES IN CENTS PER 100 POUNDS							
	Classes						Canned fish, fruits, meats, and vegetables	Commodities except canned fish, fruits, meats, vegetables, sugar, and coffee
	1	2	3	4	5	6	C. L.	C. L.
Albert Lea...Minn.								
Austin	Minn.							
Faribault ...	Minn.							
Hastings	Minn.							
Le Roy	Minn.	15	12	10	7	4	4	Class arbitraries
Owatonna ...	Minn.							
Rochester ...	Minn.							
Waseca	Minn.							
Zumbrota	Minn.							
Mankato	Minn.	20	17	13	9	6	6	Class arbitraries
Chicago Great Western Railroad stations named below								
Douglas	Minn.							
Judge	Minn.							
Lena	Minn.							
Le Roy	Minn.							
Ostrander ...	Minn.	15	12	10	7	4	4	Class arbitraries
Pine Island..	Minn.							
Racine	Minn.							
Simpson	Minn.							
Spring Valley.	Minn.							
Stewartville..	Minn.							
Zumbrota	Minn.							

and other points taking the same rates are made up of the local rates from the eastern groups to Chicago, as shown in Table 7 of this treatise, and the proportional rates and arbitrarities shown in Tables 41 and 42 applying west of Chicago and other junctions.

The rates from the eastern groups to points west of Lake Michigan, south of Lake Superior, and east of Duluth and St. Paul are made in relation to the St. Paul rates or are arbitrarities over the rates to Chicago or the

TABLE 43
THROUGH CLASS RATES FROM NEW YORK TO ST. PAUL, ALBERT LEA, AND ZUMBROTA, MINN.¹

ITEM	TO		RATES IN CENTS PER 100 POUNDS					
			Classes					
			1	2	3	4	5	6
1	St. Paul, Minn.	East of Chicago	75	65	50	35	30	25
		West of Chicago	40	34	26	18	16	13
		Through	115	99	76	53	46	38
2	Albert Lea, Minn.	East of Chicago	75	65	50	35	30	25
		West of Chicago	55	46	36	25	20	17
		Through	130	111	86	60	50	42
3	Manka- to, Minn.	East of Chicago	75	65	50	35	30	25
		West of Chicago	60	51	39	27	22	19
		Through	135	116	89	62	52	44

¹ The rates east of Chicago and the proportional rates west of Chicago are governed by the Official Classification and exceptions.

Lake Michigan ports. The rates from the eastern groups to certain points on the west bank of Lake Michigan are the same as from the same groups to Chicago. That is, certain points on the west bank of Lake Michigan are accorded the 100 per cent rates. The rates to other points immediately west of the western shore of Lake Michigan

are arbitrariness over the Chicago rates, while to points farther west and to points south of Lake Superior the rates are either arbitrariness over the Chicago rates with the St. Paul rates as maxima, or in some cases are higher than the St. Paul rates by certain arbitrariness. For rates from C. F. A. Territory the area lying south of Lake Superior and west of Lake Michigan is grouped into the following territories: The Duluth-St. Paul, the Winona, the New London (Wis.), the Marquette-Michigamme (Mich.), and the Hancock-Houghton groups.

(b) Eastbound

The rates from territory lying south of Lake Superior and west of Lake Michigan, as far west as the St. Paul group, to points east of Lake Michigan and the Illinois-Indiana State Line, the rates are made on combination breaking on Chicago, Chicago Junctions, other junctions, and lake ports. However, there are no proportional rates, as in the case of the westbound rates, applying west of Chicago and the lake ports. The rates are made up of the local rates from point of origin to Chicago or the lake ports and the rates east of those junctions. The western proportion is governed by the Western Classification to the Chicago Junctions or lake ports, while the rates east of Chicago and other points are governed by the Official Classification. From St. Paul to Chicago, for example, the rates are the following scale:

Class	1	2	3	4	5	A	B	C	D	E
Rate	60	50	40	25	20	25	20	17	14	18

This 60-cent scale applies on classes from St. Paul to Chicago as a proportion of a through rate to eastern points instead of the 40-cent scale, governed by the Offi-

cial Classification and shown in Table 41, on through westbound rates. The rates shown above from St. Paul to Chicago are the local rates. From the other groups south of Lake Superior and west of Lake Michigan to C. F. A. points and eastern groups the rates are made in relation to the St. Paul rates.

2. RATES BETWEEN TRANS-MISSISSIPPI TERRITORY AND POINTS EAST OF THE WESTERN TERMINI

Between points in Trans-Mississippi Territory¹ and points east of the Western Termini, rates are made on combination breaking on the Mississippi River, on St. Paul, or on the Missouri River. When rates break on the Mississippi River the rates east of the river are the same as the St. Louis rates. The St. Louis rates are those for the 117 per cent group. That is, on all shipments between points east of the Western Termini and points in Trans-Mississippi River Territory that pass through the Mississippi River Crossings (St. Louis to Dubuque, inclusive) are the 88-cent scale—the St. Louis rates. However, as stated in the Mississippi River case, in the preceding chapter of this treatise, the rates between Upper Mississippi River Crossings (Keokuk to Dubuque, inclusive) are on the basis of a 120 per cent of the New York-Chicago rates for shipments between points in Iowa and other points east of the Missouri River on the one hand and points east of the Western Termini on the other. Between Trans-Mississippi Territory and points east of the Western Termini the 117 per cent basis applies east of the Mississippi Crossings, but between Iowa points and other nearby points east of the Missouri River

¹ Map 1; also Appendix A of the treatise on "Freight Classification."

on the one hand and points east of the Western Termini on the other the 117 per cent basis applies east of the lower crossings and the 120 per cent east of the upper crossings.

3. FROM C. F. A. TERRITORY TO MISSISSIPPI VALLEY POINTS

From C. F. A. Territory to Mississippi Valley points specified in Tariff No. 15 (and reissues) of the agent of the Central Freight Association, the rates are based over the rates from St. Louis, Mo., and Louisville, Ky., to the same points of destination. The rates from St. Louis are the same as those from Louisville to all points in the Mississippi Valley. The arbitraries over the St. Louis-Louisville rates from the groups in C. F. A. Territory to Mississippi Valley points are shown in Table 44. The rates from C. F. A. Territory to Mississippi Valley points are published in Tariff No. 15 (and reissues) of the agent of the Central Freight Association, and are governed by the Southern Classification.

4. RATES FROM POINTS EAST OF THE ILLINOIS-INDIANA STATE LINE TO POINTS IN GREEN LINE TERRITORY

From points in the states of Indiana, Ohio, and Michigan to points in Green Line Territory (Map 5) the rates are based on the rates fixed by the southern lines from the Ohio River Crossings, Hagerstown, Md., Strasburg Junction, Va., Shenandoah Junction, W. Va., Potomac Yards, D. C., Baltimore, Md., and the Virginia Gateways plus the established rates from points of origin to said crossings and gateways.

From Western Termini and points grouped therewith to Green Line Territory the rates are also made up of

the rates south of the Ohio River Crossings and other gateways mentioned above, plus the rates from the Western Termini to those crossings and gateways. However, these rates cannot exceed the all-rail rates from New York to the same points in Green Line Territory by more than the following differentials:

Class	1	2	3	4	5	6
Rate	15	13	11	9	7	6

Rates between Western Termini and southern points may also break on the South Atlantic ports. Where rates are made through the South Atlantic ports the following basing rates from the Western Termini to Charleston, Savannah, and Brunswick are used.

Class	1	2	3	4	5	6
Rate	78	68	58	45	35	30

TABLE 44

BASIS FOR RATES FROM CENTRAL FREIGHT ASSOCIATION TERRITORY
TO MISSISSIPPI VALLEY POINTS—ARBITRARIES OVER
THE ST. LOUIS-LOUISVILLE RATES¹

GROUP No.	To MISSISSIPPI VALLEY POINTS FROM	ARBITRARIES IN CENTS PER 100 POUNDS												Per Bbl. F	
		Classes													
		1	2	3	4	5	6	A	B	C	D	E	H		
1	Evansville	3	3	3	2	2	2	2	2	2	2	2	3	5	
2	Vincennes	No Arbitraries													
3	Indianapolis	8	8	8	4	4	4	3	4	2	2	3	4	4	
4	Ft. Wayne-Columbus.....	20	15	10	8	7	6	6	6	6	6	5	8	12	
5	Detroit-Toledo														
6	Buffalo-Pittsburgh	26	20	14	11	9	8	8	8	8	8	7	11	16	
7	Howard City.....														
8	Owendale														
9	Clare														
10	Cadillac	31	24	17½	13½	10½	9	9	9	9	9	8	12	18	
11	Traverse City.....														
12	Cheboygan														
13	Manistique	23	17½	12	9½	8	7	7	7	7	7	6	9	14	
14	Kentucky	20	18	16	10	8	7	6	7	5	5	7	10	10	

¹ The rates are governed by the Southern Classification.

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All-rail rates to Charleston, Savannah, and Brunswick proper are observed as minima to points of destination through these ports. The Official Classification governs from the Western Termini to the South Atlantic ports and the Southern Classification beyond. South Atlantic port combinations are not authorized on lettered classes.

In constructing through rates on the combinations through the Virginia Gateways and the Ohio River Crossings the first six classes of the Southern are used as equivalent to the six classes of the Official, and the lettered classes of the Southern Classification are assimilated as follows with Classes 4, 5, and 6 of the Official:

Southern Classification, Class.....	A	B	C	D	E	H	F
Equivalent to							
Official Classification, Class.....	6	6	6	6	5	4	twice-sixth class

The through rates on commodities not covered by published tariffs are made not higher than combinations of established rates to the Ohio River Crossings and Virginia Cities plus the full rates south of such crossings and Virginia Cities. The through rates constructed on the combination of the rates north and south of the Crossings and the Gateways are governed by the Southern Classification, except that to the territory of the associated railways of Virginia and the Carolinas the associated railways' exceptions are applied. When commodity rates are made on combinations, they are subject to class rates as maxima except on petroleum and its products.

Rates on classes and commodities from points in Buffalo-Pittsburgh Territory to points in Florida on and south of the Jacksonville-Lake City-Live Oak Line (except to Jacksonville, Fla., and group) are made on the Virginia Cities, the Ohio River, or the Jacksonville com-

bination. Rates are made by combination on Ashland, Ky., and Kenova, W. Va., except that on shipments destined to points east of the Chattanooga-Athens-Augusta-Macon-Live Oak Line the Cincinnati rates apply as maxima.

CHAPTER IX

RATES WITHIN CENTRAL FREIGHT ASSOCIATION TERRITORY

1. THE CENTRAL FREIGHT ASSOCIATION SCALE

Class rates within Central Freight Association Territory¹ are based very roughly on the Central Freight Association Scale of class rates for distances shown in Table 45. However, the class rates are based only very roughly on this scale. Rates between points on the main east-and-west lines follow rather closely the C. F. A. Scale, except where competition of commercial centers has forced lower rates than the scale provides. For example, the class rates from Chicago to Detroit and Port Huron, Mich., are those for 250 miles according to the C. F. A. Scale, while the actual distance to Detroit is 285 miles, and Port Huron is still more distant from Chicago than Detroit.

While the actual rates applying on the east-and-west lines are sometimes lower than the distance scale, on north-and-south lines between points in the northern part of the Southern Peninsula of Michigan on one hand and points in southern Ohio and Indiana on the other the rates are usually higher than the scale prescribes. The C. F. A. Scale is the basis for class rates within C. F. A. Territory, but the association prints for the use of its members what is known as "revised minimum class

¹ Map 8.

rates." These revised minimum rates govern shipments between common points within C. F. A. Territory, and the tariffs are made up from this revised basis. The tariffs of the individual carriers follow the "revised minimum class rates" as adjusted by the association. While in the "revised minimum class rates" rates are shown specifically from and to all common points within C. F. A. Territory, the rates for non-common points are not shown in the "revised minimum class rates." In making up their tariffs the individual carriers usually group intermediate points with the common point beyond.

TABLE 45

BASIS FOR CLASS RATES BETWEEN POINTS IN CENTRAL FREIGHT
ASSOCIATION TERRITORY—THE C. F. A. SCALE¹

MILES	RATES IN CENTS PER 100 POUNDS					
	Classes					
	1	2	3	4	5	6
5	7½	7½	7	6	4	3
10	7½	7½	7	6	4½	3
15	7½	7½	7½	7	5	3½
20	7½	7½	7½	7	5	4
25	7½	7½	7½	7	5½	4½
30	7½	7½	7½	7	6	5
35	8½	8½	8	7½	6½	5½
40	9½	9½	9	8	7	6
45	10½	10½	10	8	7½	6
50	12	11½	10½	8½	7½	6½
55	13	12½	11½	9	7½	6½
60	14½	13	12	10	7½	6½
65	15½	14	13	10	7½	7
70	17	15	13½	10	8	7
75	18	16	15	10½	8	7
80	19½	18½	17	11	8½	7½
85	21	19	17	11½	8½	7½
90	22	20	17	12	9	8
95	23	22	18	12	9	8

¹ When a rate is desired for a distance not given in the foregoing scale use the rate for the next greater distance.

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TABLE 45—CONTINUED

MILES	RATES IN CENTS PER 100 POUNDS					
	Classes					
	1	2	3	4	5	6
100	24	22	19	12½	9	8
110	24½	22	19½	12½	9	8
120	25	22	19½	12½	9½	8
130	26	23	19½	13	10	8½
140	27½	24	20	13	10	8½
150	28½	25	20	13½	10½	8½
160	30	26	21	13½	11	9
170	31	26½	21½	14	11	9
180	31½	27	21½	14	11½	9
190	32	28	22	14½	11½	9½
200	33	28½	22	15	12	9½
210	34	29½	22½	15	12½	10
220	35	30	22½	15	13	10
230	35½	30½	23½	15½	13	10½
240	36	31	23	16	13	10½
250	37	32	23½	16	13½	10½
275	38½	33	24½	16½	14	11
300	40	34	25	17	14½	11½
325	41	35	26	18	15	12
350	42	36	27	18½	15½	13
375	43	36½	27½	19	16½	13½
400	44	37½	28½	19½	17	14
425	44½	38½	29	20½	17½	14½
450	45	39	30	21	18	15

The C. F. A. Scale as here shown is used as the fundamental basis for the "revised minimum class rates" promulgated by the Central Freight Association, but there are rather wide variations from the C. F. A. Scale in the minimum rates.

In the states in which there are no rates prescribed by the commissions the carriers apply the "revised minimum class rates," grouping intermediate points with the more distant common points. There are distance rates prescribed, however, in two of the states in the C. F. A. Territory. These states are Illinois and Michigan (lower

peninsula). The Illinois distance rates are higher than the C. F. A. Scale. The Illinois rates, however, are governed by the Illinois Classification, and are distributed into ten classes, while the C. F. A. Scale is governed by the Official Classification with only six classes and three rules. For this reason an exact comparison of the two tables of distance rates is rather technical.

Within the state of Michigan the carriers and the railroad commission have agreed upon the scale of rates shown in Table 46. These rates are shown for certain distances only in the table.

TABLE 46
INTRASTATE DISTANCE RATES IN MICHIGAN

MILES	RATES IN CENTS PER 100 POUNDS					
	Classes					
	1	2	3	4	5	6
5	13	11	9	6	5	4
10	14	12	9	7	5	4
20	16	14	11	8	6	4½
40	20	17	13	10	7½	6
100	29	25	19	14	10½	8½
200	39	34	26	19	14½	11½
400	51	44	34	25	19	15
500	55	47	36	27	20½	16

By comparing Tables 45 and 46 it is evident that the rates within the state of Michigan are materially higher than the C. F. A. Scale. It is interesting to note that the rates prescribed by the Central Freight Association are lower than those agreed upon by the railroad commission and the carriers in the state of Michigan. They are also lower than the rates prescribed by the Illinois Railroad and Warehouse Commission. It is an interesting bit of history that in 1905 and 1906 the Illinois Railroad and Warehouse Commission reduced its rates

because they were higher than the C. F. A. Scale. They were so much higher that points in Indiana were accorded much lower rates to St. Louis than applied from Chicago to St. Louis. The rates between Chicago and St. Louis are subject to the Illinois distance rates. The complaint in this case was brought before the commission of Illinois by the shipping interests of Chicago and other Illinois cities. Even after the reduction was made the Illinois distance rates still remained materially higher than the C. F. A. Scale.

The commodity rates within C. F. A. Territory are in some cases percentages of certain classes. In other cases special adjustments for the numerous commodities are made. The states of Indiana and Ohio do not prescribe distance rates. The C. F. A. Scale is applied largely within those states but it is very much modified. The state of Indiana has not limited the carriers in rate-making in any way, but the legislature of the state of Ohio passed a maximum freight rate law a number of years ago. One provision of this statute forbade the ex-action of more than 5 cents per ton per mile for freight transported for a distance of 30 miles or more. However, the carriers were allowed to make a reasonable charge for loading and unloading, which provision was never taken advantage of by the carriers.²

2. RATES BETWEEN THE WESTERN TERMINI AND POINTS IN CENTRAL FREIGHT ASSOCIATION TERRITORY

(a) *Class Rates*

The rates within the Central Freight Association Territory are based roughly, as stated in the preceding sec-

² McPherson, L. G., *Railroad Freight Rates*, 78.

tion, on the C. F. A. Scale for class rates. Between Western Termini and points in C. F. A. Territory east of the 100 per cent group rates are based roughly on the C. F. A. Scale.

The rates between 100-122 per cent points in C. F. A. Territory and the Western Termini⁸ are not based on the C. F. A. Scale.

Table 47 shows the basis for rates between the Western Termini and percentage points 100-122. The table shows that the rates are percentages of the rates from the percentage groups to New York. The rates apply between, that is, on both eastbound and westbound shipments; but, odd as it may seem, the rates are based on the rates from the percentage groups to New York City. The class rates are in no case based on the rates from New York City to the percentage groups in question. Table 47 shows the percentages of the rates to New York that apply from percentage groups to the Western Termini or in the opposite direction. The rates between Chicago and Pittsburgh are 60 per cent of the rates from Chicago to New York. The rates from Evansville, Ind., to Buffalo, N. Y., are 62 per cent of the rates from Evansville to New York City, and the same rates apply westbound. The rates from Evansville, Ind., to New York City are 105 per cent of the rates from Chicago to New

⁸ The Western Termini of Eastern Trunk Lines are:

Allegheny, Pa.	East Buffalo, N. Y.	Pittsburgh, Pa.
Bellaire, Ohio	Erie, Pa.	Salamanca, N. Y.
Black Rock, N. Y.	Huntington, W. Va.	Suspension Bridge, N. Y.
Buffalo, N. Y.	Irvineton, Pa.	Titusville, Pa.
Buffalo Junc., N. Y.	Kenova, W. Va.	Tonawanda, N. Y.
Charleston, W. Va.	Niagara Falls, N. Y.	Wheeling, W. Va.
Corry, Pa.	Oil City, Pa.	
Dunkirk, N. Y.	Parkersburg, W. Va.	

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York City. The westbound rates from New York to Evansville are 110 per cent of the rates from New York to Chicago as shown on Map 3. This 110 per cent of the New York-to-Chicago rates is not used as a basis for the class rates from the Western Termini to Evansville. The class rates apply in both directions between Western Termini and 100-122 per cent points, but are based on the percentages shown in the right-hand column of Table 47 of the rates from the percentage groups to New York City. This is not true of the commodity rates as is explained below. If a change is made in the class rates between New York and Chicago, the same proportional change is made between all Western Termini points and percentage points shown on Map 4.

TABLE 47
BASIS FOR CLASS RATES BETWEEN THE WESTERN TERMINI AND
PERCENTAGE GROUPS 100-125 ON CENTRAL
FREIGHT ASSOCIATION TERRITORY¹

Points on Map 4 taking 100 per cent or higher of the rates from Chicago to New York	Per cent of rates from percentage groups to New York
100 per cent	60
Over 100 to and including 110 per cent	62
Over 110 to and including 116 per cent	64
117 per cent	64½
Over 117 to and including 125 per cent ²	70

¹ Petition No. 2 of Central Freight Association for Relief from the Fourth Section of the Act to Regulate Commerce.

² Except that to and from points listed below and stations usually taking the same rates the rates are 64½ per cent of those to New York.

Benton, Ill.	Eldorado, Ill.	Paducah, Ky.
Brooklyn, Ill.	Enfield, Ill.	Parker City, Ill.
Cairo, Ill.	Gale, Ill.	Percy, Ill.
Carbondale, Ill.	Henderson, Ky.	Pinckneyville, Ill.
Carmi, Ill.	Marion, Ill.	Shawneetown, Ill.
Chester, Ill.	Mound City, Ill.	Sparta, Ill.
Coulterville, Ill.	Murphysboro, Ill.	Tamaroa, Ill.
DuQuoin, Ill.	Norris, Ill.	Thebes, Ill.
East Cape Girardeau, Ill.	Owensboro, Ky.	

(b) Commodity Rates

Rates on general commodities that take 25 cents per 100 pounds or higher between New York and Chicago are based in the same manner as class rates, except that the eastbound rates are based on eastbound rates, and the westbound rates on westbound rates. For example, if a commodity takes a rate of 40 cents per 100 pounds from Chicago to New York, the rate from Evansville, Ind., to New York is 105 per cent of 40 cents, or 42 cents, whereas the rate from New York to Evansville, Ind., is 110 per cent of the rate from New York to Chicago. Even where the rates are the same eastbound as westbound, between Chicago and New York, the rates to and from the percentage groups are frequently different. Moreover, there is frequently a difference between the rates eastbound and those westbound between Chicago and New York on the same commodity. The only difference between the basis for class rates and commodity rates that take 25 cents per 100 pounds or higher between New York and Chicago is that the class rates are based on the rates from the percentage groups in question to New York City, while the commodity rates are based in the same manner for eastbound shipments, but are based on the rates from New York City to the percentage points in question for westbound shipments.

However, when the commodity rates between New York and Chicago are less than 25 cents per 100 pounds, they are proportionally higher than class rates between percentage points 100-122 and Western Termini. Table 48 shows the basis of commodity rates between Western Termini and percentage groups 100-122 for commodities on which the New York-Chicago rates are less than 25 cents

per 100 pounds. The rates from the percentage points shown to the Western Termini are based on the rates from the percentage points in question to New York City, while the rates from Western Termini to percentage points 100-122 are based on the rates from New York City to the percentage points in question. The percentages for these rates are slightly higher than those shown in Table 47. They vary from $62\frac{1}{2}$ to $72\frac{1}{2}$ per cent, while those in Table 48 vary from 60 to 70 per cent. For example, from Chicago and other 100 per cent points to the Western Termini the class rates and the commodity rates that take 25 cents per 100 pounds or higher from Chicago to New York are 60 per cent of the rates from Chicago to New York, while for commodities that take

TABLE 48

BASIS FOR COMMODITY RATES BETWEEN THE WESTERN TERMINI
AND PERCENTAGE GROUPS 100-125 FOR COMMODITIES ON
WHICH THE NEW YORK-CHICAGO RATES ARE LESS
THAN 25 CENTS PER 100 POUNDS¹

Points taking percentages shown below of the rates from Chicago to New York or from New York to Chicago	Per cent of rates to or from New York
100 per cent	$62\frac{1}{2}$
Over 100 to and including 110 per cent	$64\frac{1}{2}$
Over 110 to and including 117 per cent	$66\frac{1}{2}$
Over 117 to and including 125 per cent ²	$72\frac{1}{2}$

¹ Petition No. 2 for Relief from the Fourth Section of the Act to Regulate Commerce filed by the agent of the Central Freight Association with the Interstate Commerce Commission.

² Except that between points listed in footnote 2 of Table 47 and Western Termini the rates are $66\frac{1}{2}$ per cent of those to or from New York.

less than 25 cents per 100 pounds from Chicago to New York the rates to the Western Termini are $62\frac{1}{2}$ per cent

of the rates from Chicago to New York. The percentages are also different for the other percentage groups, as shown in the table.

If a commodity rate be authorized between Chicago and Western Termini of Trunk Lines as a basis rate, which is not the same as an established class rate between the same points, the same percentage of reduction is made between other points taking 100 per cent or less on the one hand and Western Termini on the other as between Chicago and the Western Termini; but if a duly authorized commodity rate be made applicable only between specified points and not as a basis rate, it does not apply to or from the Western Termini points unless so authorized by the Central Freight Association.

The rates on live stock (except hogs) and dressed meats from percentage points 100-122 to the Western Termini are based as shown in Tables 17 and 47 on the rates from the percentage points in question to New York City. From points taking less than 100 per cent of the Chicago to New York rates, the rates on livestock and dressed meats to Trunk Lines Western Termini are percentages of the Chicago rates.

If a commodity rate be established from Chicago to Pittsburgh, Pa., that results in a reduction which is to be established from all other C. F. A. points, the same percentage reductions are made to Charleston, Gauley Bridge, Huntington, and Parkersburg, W. Va., as are made to Pittsburgh from such points of origin. For example, if a commodity rate of 24 cents is established from Chicago to Pittsburgh on an article classified as third class in the Official Classification, and rates on a corresponding basis are published from other points in C. F. A. Territory, the rates from the same points of

origin to Charleston, Gauley Bridge, Huntington, and Parkersburg are reduced correspondingly, while from percentage points taking higher than 100 per cent the rates are not based directly on the rates from Chicago to New York, but are made by adding arbitraries to the Chicago rates, as explained in the preceding paragraphs and shown in Table 17.

CHAPTER X

RATES IN TRUNK LINE AND NEW ENGLAND TERRITORIES AND BETWEEN THOSE TERRITORIES

1. WITHIN TRUNK LINE TERRITORY

Formerly there were many distance tables used as a basis for rates by the several carriers within Trunk Line Territory. More recently, however, the larger number of these distance tables have been published as specific rates, yet the specific rates are in most cases identical with the old distance tables. There are a number of distance tables still applicable on the movement of coal, eastbound, within Trunk Line Territory. The Pennsylvania Railroad, for example, still publishes distance rates from its coal mines to the eastern part of Trunk Line Territory.

The present adjustment of rates between points in Trunk Line Territory, including the Western Termini, is on the following general basis. Between New York rate points and Pittsburgh and Erie rate points the rates are 60 per cent of the New York-Chicago rates. For the six classes the scale is: 45-39-30-21-18-15 cents. Between Philadelphia rate points and Pittsburgh and Erie rate points for the six classes rates are arbitraries of 6-6-2-2-2 cents per 100 pounds, less the rates between New York and Pittsburgh or Erie. Between Baltimore rate points and Pittsburgh and Erie rate points, the six class rates are arbitraries of 8-8-3-3-3-3 cents per 100 pounds

lower than the rates between New York and Pittsburgh or Erie points. Between New York, Philadelphia, and Baltimore rate points and Buffalo rate points, rates are the Philadelphia-Erie rates. These rates are a 39-cent scale. From Albany and Utica rate points to Pittsburgh and Erie rate points, class rates are the Philadelphia-to-Pittsburgh class rates; commodity rates are 80 per cent of the New York-to-Pittsburgh commodity rates. From Pittsburgh rate points to Albany rate points, rates are the Pittsburgh-to-New York rates. From Erie rate points to Albany rate points, rates are 92 per cent of the Erie-to-New York rates. From Pittsburgh rate points to Utica rate points, rates are 92 per cent of the Pittsburgh-to-New York rates. From Erie rate points to Utica rate points, rates are 80 per cent of the Erie-to-New York rates. From Syracuse and Rochester rate points to Pittsburgh and Erie rate points, class rates are the Syracuse-to-Cleveland class rates; commodity rates are 70 per cent of the New York-to-Pittsburgh commodity rates. From Pittsburgh rate points to Syracuse rate points, rates are 84 per cent of the Pittsburgh-to-New York rates. From Pittsburgh rate points to Rochester rate points, rates are 72 per cent of the Pittsburgh-to-New York rates. From Erie rate points to Syracuse rate points, rates are 75 per cent of the Erie-to-New York rates. From Erie rate points to Rochester rate points, rates are 62 per cent of the Erie-to-New York rates. Rates from Pittsburgh and Erie rate territories to Rouse's Point, rate points in Trunk Line Territory are the Cleveland-to-Boston rates. Rates from Buffalo rate territory to Rouse's Point rate points are the rates current from Pittsburgh or Erie to Boston.

Rates having been determined to and from the various groups described above, the rates between other points in Trunk Line Territory are fixed upon a relative basis with regard to mileage, geographical relation, and competition, and the local points grouped with the next common point beyond. Under this method of establishing the rates a direct line does not require a greater rate for a shorter than a longer haul over the same line in the same direction, except where competitive influences have made exceptions necessary; but via the more circuitous routes there are violations of the fourth section of the Act to Regulate Commerce.

2. FROM TRUNK LINE TERRITORY AND WESTERN TERMINI TO NEW ENGLAND FREIGHT ASSOCIA- TION TERRITORY

Points in Trunk Line Territory are arranged in groups known by the name of the base points. These points are: Newark, Scranton, Binghamton, Utica, Syracuse, Rochester, Buffalo, Philadelphia, Baltimore, Washington, Richmond, Norfolk, Pittsburgh, etc. The New England Freight Association Territory is arranged with the following points as bases: Pelham, New York, Hartford, Boston, Portland, Brunswick, Woodsville, and Sherbrooke.

The rates from Trunk Line Territory to New England Territory are on the following general basis. Rates from Pittsburgh and Erie rate territories to New York and Pelham rate territories are based upon 60 per cent of the New York-to-Chicago rates. For the six classes the rates are: 45-39-30-21-18-15 cents per 100 pounds. Rates from Pittsburgh and Erie rate territories to Hartford, Boston, Portland, and Brunswick rate territories are arbitraries

5-4-3-3-2½-2 cents for the six classes higher than the Pittsburgh-to-New York rates. Rates from Pittsburgh and Erie rate territories to Sherbrooke and Woodsville rate territories in the United States are the Cleveland-to-Boston rates. For the six classes this scale is: 60-52-40½-29-24½-19½ cents per 100 pounds. Rates from Pittsburgh and Erie rate territories to Sherbrooke rate territory in Canada are the Toledo-to-Boston rates. For the six classes this scale is: 65½-56½-44-31½-26½-21½ cents per 100 pounds. From Buffalo rate territory to Pelham and New York rate territories, rates are those current from Buffalo to New York. The class scale is as follows:

Class	1	2	R25	3	R26	R28	4	5	6
Rate	39	33	28	28	22	22	19	16	13

Rates from Buffalo rate territory to Hartford, Boston, Portland, and Brunswick rate territories are arbitraries of **5-5-2½-2½-2½-2** cents per 100 pounds for the six classes higher than the Buffalo-to-New York rates shown above. From Buffalo rate territory to Woodsville and Sherbrooke rate territories, rates are the Pittsburgh-to-Boston rates. The rates from the Western Termini points having been determined, as shown above, the rates from other groups to the same destinations are fixed upon a relative basis of rates with regard to mileage, geographical relation, and competition. The rates are fixed by the shorter and more direct routes, but apply also via the longer and more circuitous routes, and in the observance of such adjustment, the lines comprised of shorter or more direct routes from and to some groups are the longer or more circuitous routes from and to other groups. Thus, while there is no violation of the fourth

section of the Act to Regulate Commerce on the direct routes, there are violations by the circuitous routes.

3. FROM TRUNK LINE TERRITORY TO POINTS IN EASTERN CANADIAN TERRITORY

The points in Eastern Canada include only points east of Kingston, Sharbot Lake, North Bay, and Depot Harbor, Ont., and points in New York and the New England States routing through Canada. The points in Trunk Line Territory are grouped around the following bases: New York, Boston, Philadelphia, Baltimore, Albany, Syracuse, Rochester, Buffalo, etc. The adjustment of rates from Trunk Line Territory to Eastern Canadian points as described above is on the following basis. Rates from New York rate territory. Rates from Albany rate are made on the basis of 73 per cent of the New York-to-Chicago rates. Rates from New York rate territory to Carleton Place rate territory are made on the basis of 76 per cent of the New York-to-Chicago rates. Rates from New York rate territory to Quebec rate territory are made on the basis of 78 per cent of the New York-to-Chicago rates. Rates from Philadelphia and Baltimore rate territories to Canadian territory, described above as Eastern Canadian points, are based the same as rates from New York rate territory. Rates from Albany rate territory to points in Montreal, Carleton Place, and Quebec rate territories are made the same as from Albany to 73, 76, and 78 per cent points in C. F. A. Territory, respectively. The rates from New York, Philadelphia, Baltimore, and Albany rate points, as outlined above, being determined, the rates from other groups to the same destinations are fixed upon a relative basis of rates with

regard to mileage, geographical relation, and competition. Rates to Canadian territory other than described above are made by adding arbitrarities to base point rates. Rates from Erie, Pittsburgh, Connellsville, Johnstown, Wheeling, and Parkersburg rate territories to Canadian territory, as described herein, are made in proper relationship and upon the principles outlined in the above adjustment. There are certain exceptions to the general scheme as outlined above in establishing rates from Trunk Line points to Canadian points. The rates from Trunk Line Territory to Canadian points, as outlined above, are fixed by the shorter or more direct routes, but are also applied via the more circuitous routes and in the observance of such adjustment, lines that comprise the shorter or more direct routes from and to some groups, are the longer and more circuitous routes from and to other groups. Hence, there are violations of the fourth section of the Act to Regulate Commerce by the more circuitous routes but not by the direct routes.

4. RATES WITHIN NEW ENGLAND TERRITORY

Although at the present time the rates within New England Territory are published specifically from point to point, an examination of the tariffs indicates that the rates were originally based on distance tables or were based at least rather closely on distance. It is probable that the later tariffs carry approximately the same rates as were originally prescribed in the distance tables. However, some of the older New England railway officials state that as far back as they can remember the rates were published specifically from point to point. The rates within the neighboring eastern Canadian territory are

largely distance rates. The Grand Trunk Railway, the Maine Central Railroad, and other carriers publish and use distance tables between points in Canada. In the New England Investigation Commissioner Prouty had the following to say concerning the freight rates of New England.

RATES OF TRANSPORTATION.

For many years the railroad monopoly of New England has been more complete than in any other considerable section of this country. The Boston & Maine has almost exclusively occupied the northern portion of that section, while the New Haven has enjoyed the same exclusive privileges in the south. It is interesting to inquire how the rates of transportation, both freight and passenger, there compare with other parts of the country.

The average receipts per ton-mile upon the New Haven Railroad for the year 1911 were 1.39 cents. This is probably a higher per ton-mile average than is shown by any other large railroad system in the United States. It does not, however, follow from this that the rates under which that road operates are therefore higher.

This is well illustrated by a reference to the same figure upon the Boston & Maine. In 1900 the ton-mile receipts of that system were 1.439 cents, somewhat greater than those then or now upon the New Haven. In 1901 that figure had fallen to 1.134 cents, the reason being that, beginning July 1, 1900, the Boston & Maine began to operate and so included in its return to this Commission for that year the Fitchburg Railroad. That railroad handles a large amount of through traffic of a low grade and paying a low rate, and this tends to reduce the average rate which for that company in 1900, the year before it was absorbed by the Boston & Maine, had been 0.798. For the year 1911 the ton-mile receipts of the Boston & Maine were 1.095 cents.

While, therefore, the average ton-mile receipts of the New England railroads are probably higher than those in any other section of this country where traffic conditions are fairly com-

parable with New England, this figure has but slight significance as bearing upon the relative transportation charge. . . .

For the purpose of the comparison representative cities located in . . . various sections have been selected, namely, Boston, New York, Pittsburgh, Cincinnati, and Chicago. Rates from Boston are exclusively within the limits of New England; from New York they apply both into New England upon the east and into trunk line territory upon the west; from Pittsburgh we have rates into trunk line territory going east and into central freight association territory going west. Cincinnati and Chicago are exclusively in central freight association territory, save that rates have been examined from Cincinnati south into southern territory.

In addition to the principal cities above selected we have also taken certain smaller towns—in New England, Burlington, Vt., and Concord, N. H.; in trunk line territory, Schenectady, N. Y., and Scranton, Pa.; in central freight association territory, Akron, Ohio, and Springfield, Ill.

The rates selected for purposes of comparison have been, first of all, the class rates. While in the three territories under consideration many commodity rates are in effect which are less than the class rates and which move an enormous volume of traffic and are of vital consequence to the communities served, still the preponderating movement of merchandise traffic, strictly speaking, is under the class rates or under rates which are a percentage of the class rates, so that the most comprehensive and fairest comparison probably arises upon a statement of the relative class rates.

Generalizing the results of these comparisons, without attempting to give the figures themselves, we find that class rates in central freight association territory are distinctly lower than in New England, especially on classes 5 and 6. These two classes move a very large amount of carload traffic, being the two classes which apply very generally to carload business. Class rates from New York and Boston to New England points are about the same as those from New York and Pittsburgh into trunk line territory.

Class rates from interior New England points appear to be

rather higher than corresponding rates in both trunk line and central freight association territories.

We have also instituted a comparison between rates from these same points on three or four of the principal commodities.

Coal is not produced in New England, but is extensively consumed. Coal rates from the various seaports of New England to near-by interior points are uniformly high as compared with rates for similar distances in the other territories under consideration. Rates to more distant interior points are not so extravagant and are often low. The reason for this appears to be that coal reaches the various ports of New England by water and is from thence distributed by rail. This water-and-rail route competes with the all-rail route, and the purpose of these high rates to near-by points is to maintain the all-rail rate.

What has been said as to coal applies to pig iron. The rail rate to the near-by point is usually extremely high, and for the same reason apparently.

Lumber is largely produced in New England, and the rates upon that commodity between points in New England compare favorably with those in trunk line and central freight association territories for like distances.

Rates on grain are much higher in New England than in these other territories, but this is not a matter of much significance, since comparatively little grain is raised in New England which is subsequently transported by rail. The grain which New England consumes comes mainly from the west upon rates which must be considered low.

Hay is largely produced and transported in New England, and the rates upon this commodity are rather more favorable than in the other territories. Generally speaking, hay moves under the fifth-class rate, but in New England the bulk of the movement is under commodity rates, lower than this class rate.

Our examination, which has been a rather extended one, fairly indicates that freight rates between points in New England, while somewhat higher in many instances, compare favorably upon the whole with those in trunk line territory and central freight association territory. They are lower than corresponding interstate rates in other parts of the country, although

not as low in some instances as the commission-made rates of several states in this outside territory. . . .

It should be noted in this connection that the cost of handling freight is greater in New England than in trunk line and central freight association territory and, indeed, in most other parts of the country.

1. The haul in New England is shorter—93 miles as against 138 miles in the United States as a whole.

2. The switching service in New England is much greater. The proportion of locomotive switching mileage to locomotive freight mileage is 59 per cent in New England, as compared with 43 per cent in the whole country.

3. The loading in New England is lighter. The average load, including both loaded and empty cars, is 10.5 tons per car in New England, as compared with 13.4 in the United States. The average load per loaded car is 14.8 tons in New England as against nearly 20 for the United States.

4. The price of coal in New England is distinctly higher. The defendants claim that had the Boston & Maine been able to own its coal upon its tenders at the same price as the Pennsylvania Railroad its operating expenses for the year 1912 would have been \$2,500,000 less than they were. Without subscribing to the accuracy of this figure, it is certain that the greater expense of fuel adds materially to the cost of operation in New England as compared with most other portions of the United States.¹

Freight rates in Official Classification and Canadian Freight Association territories have been set forth in the preceding pages. The distance rates within the state of Virginia are included in the treatise on "Freight Rates: Southern Territory." This was done largely because the Southern Classification is followed rather closely by the Virginia Classification, although the larger part of the state of Virginia is within Official Classifica-

¹ 27 I. C. C. Rep., 572-76 (1913).

tion Territory. The rates within the state of Illinois are set forth in the treatise on "Freight Rates: Western Territory" because they are governed by the Illinois Classification, which is very similar to the Western Classification, and because the Illinois distance rates are quite similar to the rates in other states within the Western Trunk Line Territory.

The freight movement in Official Classification Territory is denser than that of any of the classification territories. The industrial development of this territory has attained a higher status than that of any other section of the United States. This is the territory of coal and iron and of traffic between the West and the thickly populated Atlantic seaboard. The railway competition and the rail-and-water competition is keener in this section than elsewhere. The competing lines have long been carrying heavy traffic, and the rate adjustment of this territory is more scientifically worked out than in any other territory. Because of the long standing adjustment of these rates and the heavy traffic moving under them, the rates of this territory are the most important freight rates in the United States. The adjustment here set forth is perhaps the most important freight rate system in the world that has been developed by private railways. For these reasons the adjustment of rates set forth in the preceding pages may be of advantage to the railways of other territories as an example of rate adjustment. However, the traffic conditions of this territory are very different from those of other territories, and this factor should be given due weight in any comparative consideration of rate adjustment in this and other territories.

TEST QUESTIONS

These questions are for the student to use in testing his knowledge of the assignment. The answers should be written out, but are not to be sent to the University.

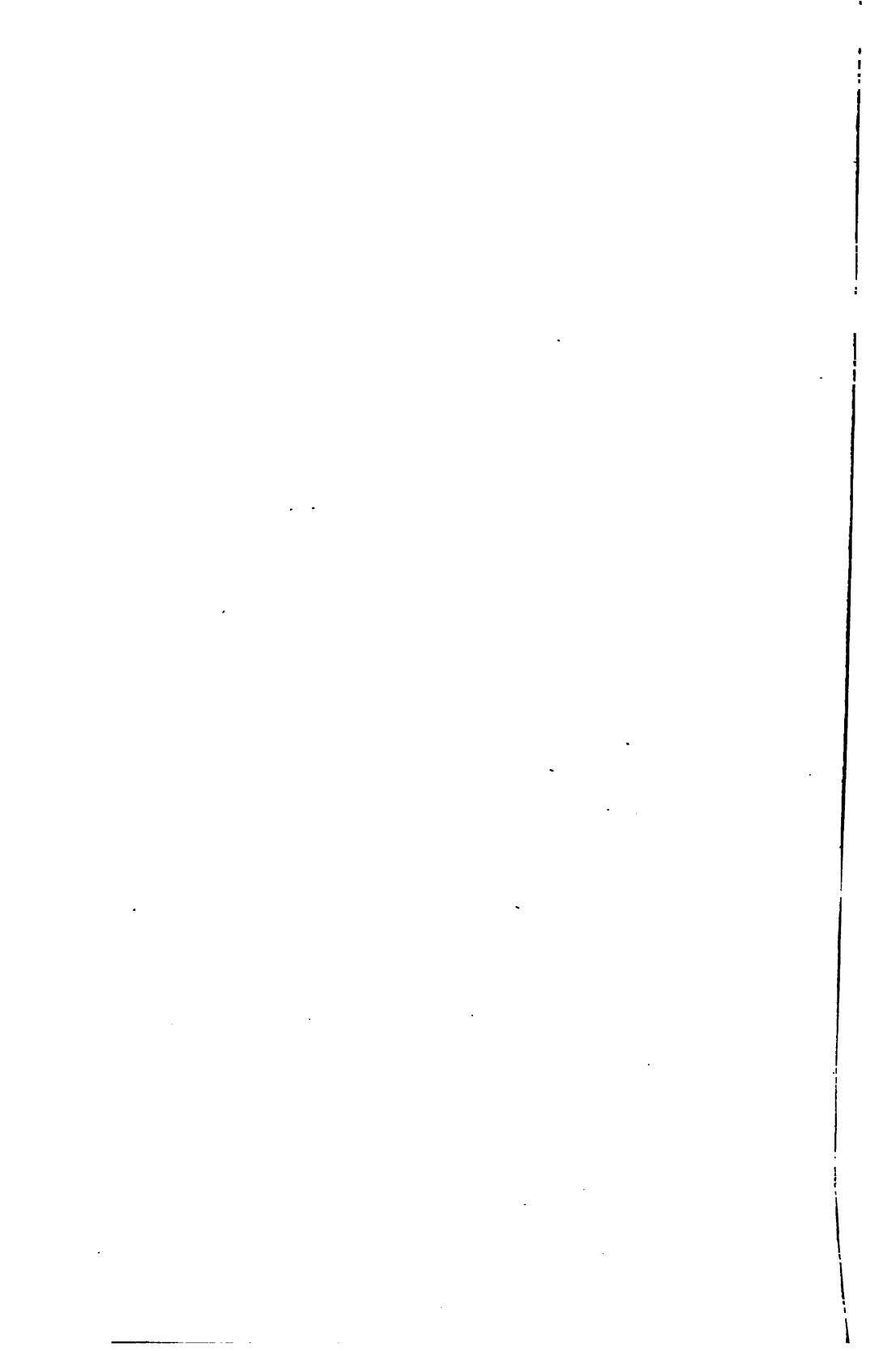
1. What are the Philadelphia and Baltimore differentials, both eastbound and westbound?
2. Discuss the important points brought out in the port differential case of 1898.
3. Did the Commission think New York was losing its export grain business on account of the differentials and to what did it ascribe the decrease?
4. What does the Commission say as to the rights of the carriers to meet competitive conditions and the principle upon which differentials are established?
5. Why did the Commission think that harm would not come from deciding in favor of the weaker ports?
6. What was the decision relative to the ex-lake rates?
7. What differentials were decided on by the Commission in the 1905 case?
8. How did the points involved in this case differ from the ones in the 1898 case?
9. Give the most important points brought out in the 1905 case, especially as to the effect of the differentials on the export grain business of New York.
10. What differentials were decided on in the 1912 case?
11. What kinds of rates were involved in the 1912 case?
12. Give the important points brought out in the 1912 case?
13. What was the Commission's decision in the 1912 case?

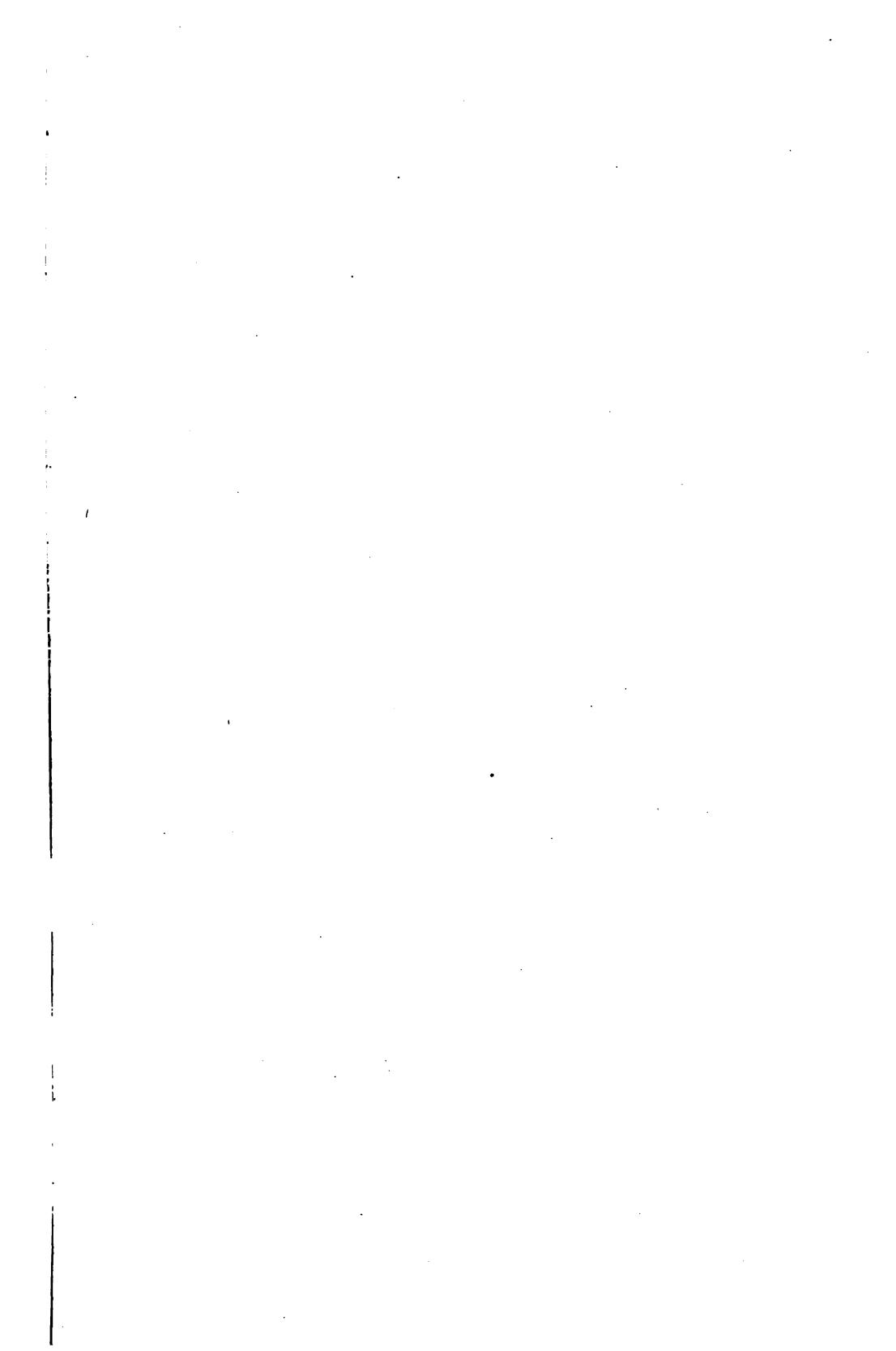
14. Do you think differentials to Philadelphia and Baltimore are warranted by conditions? Give reasons.
15. How are rates made from Atlantic Seaboard Territory to St. Paul?
16. What are the proportional rates applying to St. Paul from eastern points except the Rochester-Syracuse group?
17. How do rates from the Rochester-Syracuse group differ from the rates in question 16?
18. What arbitraries over St. Paul rates apply on classes to Albert Lea? On canned fish? On other commodities?
19. Give the class arbitraries to Mankato. To Great Western stations.
20. What are the through class rates from New York to St. Paul? To Albert Lea? To Mankato?
21. How are rates made from territory south of Lake Superior and west of Lake Michigan to eastern points?
22. How do the proportional rates to Chicago from St. Paul compare with those from St. Paul to Chicago?
23. How are rates made between Trans-Mississippi Territory and points east of the Western Termini?
24. What two percentages generally apply to the Mississippi River Crossings?
25. How are rates based to Mississippi Valley points from C. F. A. points?
26. Give the arbitraries applying from C. F. A. groups to Mississippi Valley Territory.
27. How are rates based from Indiana, Ohio, and Michigan to Green Line Territory? From Western Termini groups?
28. What classifications are used in constructing combinations through Ohio River Crossings and the Virginia Gateways?
29. How are through rates to Green Line Territory made on commodities not covered by published tariffs?

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30. How are rates made from Buffalo-Pittsburgh Territory to certain points in Florida?
31. What is the general basis for class rates within C. F. A. Territory?
32. Give the class rates in the C. F. A. Scale for 5, 50, 100, 200, 300, 400, and 450 miles.
33. In states in C. F. A. Territory where rates are not prescribed by the commissions, what rates do the carriers apply?
34. Why cannot rates in Illinois be compared with C. F. A. Scale rates?
35. Give Michigan distance rates for 5, 100, and 500 miles.
36. How do rates in Michigan compare with those shown in the C. F. A. Scale?
37. How are commodity rates made within C. F. A. Territory?
38. What rates are used in Ohio and Indiana?
39. How are class rates based between Western Termini and points in C. F. A. Territory east of the 100 per cent groups?
40. What is the basis for class rates between Western Termini points and points taking 100 per cent or more of the New York-Chicago rates?
41. Give the basis for general commodity rates between points mentioned in question 40?
42. How are live-stock rates based from 100-122 per cent points to Western Termini?
43. To what extent have distance tables been used in establishing rates within Trunk Line Territory?
44. What is the general basis for adjustment of rates within Trunk Line Territory?
45. How are rates made between points not included in the groups mentioned?

46. Mention some of the groups into which Trunk Line Territory is divided.
47. What are the base points in New England Freight Association Territory?
48. What is the general basis of rates from Trunk Line Territory to New England Territory?
49. What is the basis for rates from Trunk Line Territory to points in Eastern Canada?
50. What important points are brought out by Commissioner Prouty as to freight traffic in New England?
51. What is said as to the comparison of freight rates in New England with those in other parts of the country?
52. Why is the cost of handling freight higher in New England than in C. F. A. and Trunk Line territories?
53. Why are the rates in Official Classification Territory the most important in the country?





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